

U.S. Foreign Relations Committee on (Senate)

( IN THE SENATE OF THE UNITED STATES.

MAY 10, 1888.—Injunction of secrecy removed and ordered to be printed.

MAY 7, 1888.

Mr. EDMUNDS, from the Committee on Foreign Relations, submitted the following )

REPORT (EXECUTIVE No. 3)

ON THE TREATY (EX. M.) BETWEEN THE UNITED STATES AND GREAT BRITAIN, CONCERNING THE INTERPRETATION OF THE CONVENTION OF OCTOBER 20, 1818, SIGNED AT WASHINGTON FEBRUARY 15, 1888; WHICH, TOGETHER WITH THE VIEWS OF THE MINORITY ON THE SAME SUBJECT, SUBMITTED BY MR. MORGAN, WAS ORDERED TO BE PRINTED IN CONFIDENCE FOR THE USE OF THE SENATE.

*The Committee on Foreign Relations, to which was referred the message of the President of the United States of the 20th February last, transmitting a proposed treaty between the United States and Great Britain concerning the interpretation of the convention of the 20th October, 1818, signed at Washington February 15, 1888, respectfully reports :*

That it has had the said proposed treaty under careful and deliberate consideration and that it returns herewith a resolution in the ordinary form for its ratification, with the expression of its opinion that said resolution ought not to be adopted.

As preliminary to a consideration of the text of the treaty itself in its various aspects, the committee thinks it proper to give a brief résumé of the history of the fisheries question and other matters relating to the intercourse between the United States and the British dominions of North America having more or less relation thereto.

Before the Revolution the inhabitants of all the British colonies in North America possessed, as a common right, the right of fishing on all the coasts of British North America, and these rights were, in a broad sense, prescriptive and accustomed rights of property. At the end of the Revolution and by the treaty of peace of 1783, which adjusted the boundaries between the dominions of the two powers, it was (Article III)—

Agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish, and also

that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America.

This was a grant or recognition of a property right agreed upon on a consideration, viz, the adjustment of the boundaries and the other engagements into which the United States by that treaty entered. As to the open-sea fishing, it was merely a recognition of a right common to all nations, and as to the fishing within the municipal dominion of His Majesty on his coasts, bays, and creeks, it was an agreement that these rights theretofore existing in all British subjects should of right belong to those British subjects who, by force of the revolution, had become the citizens of an independent nation; and thus it was, in the partition of the territory, a reservation in favor of the people of the United States of a right which they, as British subjects, had theretofore lawfully enjoyed.

From 1783 until the war of 1812 between the two countries citizens of the United States continued to enjoy the ancient rights belonging to them as subjects of Great Britain before the Revolution and reserved to them as citizens of the United States after it, with the full freedom secured by the article last referred to. During this period of time other subjects of difference and negotiation arose between the two countries, which were disposed of by the treaties of 1794, with its explanatory articles, and of 1802; but the fishery provision of 1783 continued to exist unquestioned and apparently as having been, as it plainly purported to be, a treaty disposing of and adjusting property rights which had become by force of its own operation an executed contract.

The treaty of peace concluded on December 24, 1814, at the close of the war of 1812, provided:

*First*, for a restoration to each party of all countries, territories, etc., taken by either party during the war, without delay, saving some questions of islands in the bay of Passamaquoddy.

*Secondly*, it provided for disposition of prizes and prisoners of war.

*Thirdly*, it provided for questions of boundary and dominion regarding certain islands and for the settlement of the northeastern boundary, and also for the northwestern boundary, etc. It made no reference whatever to any question touching the fisheries mentioned in the treaty of 1783.

The commercial treaty concluded on the 3d of July, 1815, between the two countries provided for reciprocal liberty of commerce between all

the territories of Great Britain *in Europe* and the territories of the United States, but left without any new treaty stipulation or obligation commercial intercourse between British dominions in North America and the United States remaining under the exclusive control of each.

But after the conclusion of the treaties following the war of 1812, there being then no treaty obligations or reciprocal laws in force between or in either of the countries respecting commercial intercourse, the British Government set up the pretension that the fishing rights recognized and secured to citizens of the United States by the treaty of 1783 had become abrogated in consequence of the war of 1812, which, on the principle of the war annulling all unexecuted engagements between the two belligerents, it was contended, annulled the fishing rights described in the treaty of 1783, and that the citizens of the United States had, therefore, no longer the right to fish in any of the British North American waters. This pretension led to the conclusion of the treaty of the 20th October, 1818, the fisheries article of which provided that (Article I)—

Whereas differences have arisen respecting the liberty, claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company: And that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks, of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

This arrangement divided, and limited in territorial extent, the fishing rights of the people of the United States, that had existed while they were British subjects and had been recognized and existed under the treaty of peace of 1783 until the war of 1812, and it provided for a continuance of the ancient rights of fishing on certain named parts of the coasts of British North America, and its islands, and in their bays, harbors, and creeks, etc. It also provided for a renunciation by the United States of pre-existing rights to take fish, etc., "within 3 marine miles of any of the coasts, bays, creeks, or harbors" of His Majesty's dominions in British North America, not included within the previously-mentioned limits, but with a proviso, as a reservation upon the renunciation of the right to fish, that the—

American fishermen shall be admitted to enter such bays or harbors for the purposes of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

It will be observed that the ancient right continued in all its force in every bay, harbor, and creek of a described territory, and that the renunciation of the right to fish on other coasts, bays, harbors, and creeks is in the same language, and is perfectly correlative to the first, and that the line of British municipal dominion was recognized and stated to be a line 3 marine miles from these British coasts, bays, creeks, and harbors, and that this renunciation was, both in substance and form, a renunciation only of a right to *fish* and to exercise the incidents of the fishing, as drying, etc., and that the proviso to that renunciation admitted the American fishermen to enter such waters, bays, and harbors for the specific purposes necessary to them in their character as fishermen only, and not having the slightest reference, either expressly or by implication, to any *fishing* or *other* vessel of the United States and sailing under their flag, entering any port of His Majesty's dominions anywhere for any commercial or trading purpose. And these entries into exclusively British fishing waters fishing vessels (the only ones entitled to be there at all) were to be under such restrictions, and such only, as should be necessary to prevent their exercising the fishing rights that had been renounced and abusing the privileges of such entry so reserved; that is, by doing the renounced thing, viz, the taking and curing of fish, or violating the British laws excluding all American trading vessels.

It is to be kept clearly in view that at the time of the conclusion of this treaty of 1818, and for twelve years afterward, no American vessel had any right to enter any port of British North America, with the few exceptions named in the mutual arrangements of 1820 and 1823, hereinafter stated. The treaty of 1815 and the British laws and policy reserved the whole trade and intercourse with the ports of these colonies to her own vessels, and, reciprocally, there was no law or treaty of the United States which authorized the entry into ports (with the exceptions stated) of the United States of British vessels from British North American ports.

Thus it was that the treaty of 1818 omitted to make any mention of the ports in the British provinces in connection with the arrival or departure of American vessels, either fishing or other, and so it was a clear and necessary construction of the treaty of 1818 that the arrangements, conditions, and renunciations therein provided had no relation, one way or the other, to the exercise of what may be called commercial rights by the American fishing or other vessels in the waters or ports of British North America, for the *status* of things was such, that it could not be done in the case of *any* American vessel without regard to her character as a vessel engaged in fishing upon the high seas or in the British territorial waters, wherein, as was provided, she might continue to fish, or to her commercial character.

The right (except in the cases before stated) of the British to exclude such vessels and all others of the United States from her ports in British North America, as the matter stood until 1830, is fully conceded, and it is also conceded that during that time the only right of any vessel of the United States to enter the waters of British North America depended upon the treaty of 1818 alone, and in order to obtain the benefit of that treaty for such purposes, the American vessel *must* have been a fishing vessel, and must have resorted to those particular waters for some one of the purposes mentioned in the treaty, and no others.

The foregoing statement is, of course, subject to the limitation implied in whatever rights might have existed by the general law of nations in respect of vessels under circumstances requiring the exercise of humanity, etc. It must be also remarked that at the time of the conclusion of the treaty of 1818 the ports of British North America were very few and far between, and that there could be very little motive for American vessels, either fishing or other, to resort to such ports

for the purposes of trade until the British colonial policy should have been abandoned or very largely modified.

The matter, then, under the treaty of 1818 was a very simple one and can be restated thus:

(1) No American vessel had any right to resort to British North American ports for any commercial or other purpose, and no British North American vessel had any right to resort to any port of the United States for such purposes.

(2) But American fishing vessels had a right to resort to certain of the coasts, bays, harbors, and creeks of that part of British North America described in the treaty of 1818 for all purposes of fishing which they had anciently enjoyed.

(3) But American fishing vessels, and fishing vessels *only*, had also a right to resort to all other British North American waters for the special purposes named in the treaty.

(4). The general result of this was, as to American fishing vessels, that they had, on all the British North American coasts and in all her bays and harbors, the right to shelter, to repair damages, and to obtain wood and water, but on certain named parts of the same coasts, etc., they had not the right to take or cure fish; and

(5) As a consequence of the situation embraced in the British laws and in that treaty, the matter of resorting to British North American ports either by American fishing or other vessels was entirely outside of and unaffected either way by that treaty.

From 1818 forward, until after the reciprocal arrangements of 1830 concerning commerce, it is not known that any serious difficulties occurred in respect of the rights of American fishermen pursuing their calling in those regions of the sea.

Two or three instances only of seizure appear to have occurred until after 1830 and none of those touched or raised the bay or headlands question. In 1835 the British Government brought to the notice of our own the complaints of the Canadian authorities concerning alleged infractions of the treaty of 1818 by our fishermen. These complaints did not involve the bay or headlands question or any commercial question, and the complaints were immediately attended to by our Government to the satisfaction of that of Great Britain (Ex. Doc. 100, Thirty-sixth Congress, first session, pp. 56 and 58).

In 1838-'39 there were a few more seizures, but none of them appear to have raised the bay or headlands question. One was seized at the Gut of Canso but released; and none of these seizures appear to have involved any commercial or trade question excepting the *Shetland*, which, being driven inshore by a storm, anchored, and the master was enticed into selling a boy who came on board, a pair of trousers and a little tea and tobacco, for which the vessel was immediately seized, it being evident that the boy had been sent by the authorities to entrap the master (Ex. Doc. 100, Thirty-sixth Congress, first session, pp. 65 and 66); and excepting the *Magnolia*, which purchased a barrel of herring for bait; and excepting the *Hart*, which, running into Tusket Harbor in heavy weather, and while the master was on shore procuring wood and water, a British subject asked some of the crew to help him clear his nets. Some of the crew accordingly went on board the British vessel and assisted in clearing the nets, for which the British owner gave two barrels of fresh herring; and excepting the *Eliza*, which, being at anchor in a gale, carried away one of her larboard chains, and ran into Bevet Harbor, and got it repaired by a British subject, and was accordingly seized.

These instances are specially referred to to show that the bay and headlands question almost never practically arose, and that the offenses, if offenses they were, of the seized vessels, were of the most trivial and unimportant character, scarcely worthy the notice of a government.

In 1818 (and before the treaty of that year) Congress passed an act closing our ports against British vessels coming from colonial ports which were closed against vessels owned by citizens of the United States (Stats., vol. 3, p. 432); and in 1820 Congress passed a supplementary act upon the same subject and upon the same principle of mutuality, applied particularly to British North American ports and certain West Indian ones (Stats., vol. 3, p. 602); and in 1823 Congress passed an act suspending the former acts so far as they applied to sundry ports named—the Canadian ones being St. John and St. Andrews, New Brunswick; Halifax, Nova Scotia; Quebec, Canada; and St. John's, Newfoundland.

But this act was passed with the condition that the enumerated British colonial ports should be open for the admission of the vessels of the United States, and provided that, if trade and intercourse should be interrupted by the British authority in those ports, similar action should be taken by the President in respect of our own.

The act of Congress of May 29, 1830, provided for opening of all American ports to certain British colonial vessels on a mutual opening of

British colonial ports to American vessels. Section 2 of that act declared that—

Whenever the ports of the United States shall have been opened, under the authority given in the first section of this act, British vessels and their cargoes shall be admitted to an entry in the ports of the United States from the islands, provinces, or colonies of Great Britain, on or near the North American continent, and north or east of the United States (Stats., v. 4, p. 420).

Pursuant to this act President Jackson, on the 5th of October, 1830, in accordance with a mutual understanding upon the subject with the Government of Great Britain, issued his proclamation, putting this act of 1830 into effect (Stats. V. 4, p. 817). And on the 18th of November, 1830, a British order in council was issued, declaring among other things—

That the ships of, and belonging to, the United States of America may import from the United States aforesaid into the British possessions abroad goods with produce of those States, and may export goods from the British possessions abroad to be carried to any foreign country whatever (British Foreign and State Papers, V. 17, p. 894).

It is clear that under this act of Congress all British vessels, without regard to their occupation, whether fishing or other, coming from British North America, were entitled to admission into our ports for all purposes of trade and commerce. Canadian fishing vessels had the same rights as any other, for they fell within the general description stated in the statute. So, too, reciprocally, our fishing vessels fell within the general description of "ships of and belonging to the United States." Before this time *all* American vessels were excluded from British North American ports with the then recent exception before stated; then, under this arrangement *all* ships of the United States were to be admitted into British North American ports. The former almost universal exclusion was abolished without reserve. If any literal reading of this British order in council can be suggested as of a narrower construction, it would destroy the mutuality of the action of the two governments and be unworthy of a government.

Surely no nation not in a state of vassalage would consent that its citizens or subjects should for a moment be treated in or by another nation in a less favorable way than it treated the citizens and subjects of the same class and occupation of such other nation.

From the conclusion of the treaty of 1818 down to nearly 1840, as we have seen, the incidents of collision or difficulty in respect of the rights of the purely American fishing vessels under that treaty were com-

paratively few; and, so far as the committee is advised, such incidents of difficulty as occurred did not arise under any bay or headland pretension of Great Britain, but came out of a few American vessels, from time to time having come within 3 miles of the British North American shores, being seized upon one accusation or another.

In the year 1836 the province of Nova Scotia passed laws of a more stringent and unjust character than any that had existed before, and in the year 1838 that province complained, in an address to the Queen, of American aggressions and asking for a naval force to prevent them. It appears that a British force was accordingly placed on the British North American coast and the seizures of American vessels became much more numerous. (See reports and papers on the subject, Senate Ex. Doc. 100, Thirty-second Congress, first session.)

It appears from these papers that most of the cases of British seizure were for alleged violations of the customs laws. That others of them were for violations of the privileges secured by the treaty of 1818, by coming within 3 miles of the shore; and so far as it is known, it was not until the 10th May, 1843, that any American vessel was seized for fishing more than 3 miles from the shore in a bay indenting the British North American coast.

But in the diplomatic correspondence of that period the pretension was asserted by the British Government that bays more than 6 miles wide, and of indefinite width, if bays indenting British shores, were within the exclusion of the treaty of 1818, and under this pretension the American fishing vessel *The Washington* was seized for fishing in the Bay of Fundy, but more than 3 miles from the shore. This pretension of the British Government was denied by our own, but no agreement upon the subject was come to.

This state of things, with more or less of collision and harassment to our fishing vessels, continued, but without very serious difficulty, until, in 1852, an attempt was made by the British Government to induce the United States to conclude a reciprocity treaty, which failing, the British Government sent a strong force of war steamers and sailing vessels to these waters for the alleged purpose of enforcing the provisions of the treaty of 1818, but, as was believed by the people and Government of the United States, intended not only for that, but as an overawing enterprise, which should frighten the American fishermen from resorting to British waters for any of the purposes mentioned in the treaty, and to so much disturb American fishing interests as to

seriously cripple or destroy them, and thus lead the United States to enter into reciprocity with British North American provinces.

Documentary papers and discussions in the Senate at the time will show how fully this matter was understood, and how it was regarded by the people and Government of the United States. Mr. Webster, then Secretary of State, thereupon issued a circular notice to American fishermen, in which he states what the rigid and strict construction of the treaty of 1818 would be, as claimed by the British, as it respected the entrance of fishing vessels into the bays or harbors indenting the British provinces. He stated the British pretension in respect of drawing lines from headland to headland and their asserted pretension of a right to capture all American fishermen who should follow their pursuits in bays inside of such lines. But he distinctly also stated, in the same circular, that he did not agree to the construction thus put by the British upon the treaty, or that it was conformable to the intention of the contracting parties; but he informed the public of the British pretension, "to the end that those concerned in American fisheries may perceive how the case at present stands and be on their guard." (H. R. Mis. Doc. No. 32, Forty-second Congress, second session.)

This circular of Mr. Webster was of July, 1852, and on the 23d August of the same year, twenty-two years after the laws of 1830, the provincial secretary of Nova Scotia issued a notice that "no American fishing vessels are entitled to commercial privileges in provincial ports," etc. (Memorandum respecting North American fisheries, prepared for the information of the American commissioners who negotiated the treaty of 1871).

Following these operations, the claims convention of the 8th of February, 1853, between the United States and Great Britain, was concluded, and under that convention the case of the *Washington*, seized for fishing in the Bay of Fundy, as before mentioned, was heard, and the umpire decided that the true meaning of the treaty of 1818 made it lawful for the *Washington* to fish more than three miles from the shore in the Bay of Fundy, and in respect of the headland pretension he says:

That the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the treaties of 1783 and 1818.

He refers to the convention of 1839 between France and Great Britain in respect of reciprocal fishing by the subjects of each country along the shores of the other, providing that their conventional arrangements shall exclude the fishermen of each from bays which do not exceed 10 miles

in width within the shores of the other as a proper limit of the doctrine of headlands.

But upon this point (immaterial to the question before him) it is to be observed that the 10-mile headland arrangement between France and Great Britain was a mutual one, applying to the shores and bays of both countries along which the fishermen of each were accustomed to ply their calling, and if, therefore, that convention had agreed upon a distance of 10 miles from shore, and 20 miles for the width of the waters between headlands, it would have furnished no argument in respect of the principle of public law applicable to such questions or in respect of the ancient rights of the citizens of the United States in regard to the fisheries in northeastern waters, for the fishermen of each country were put upon a precisely equal footing in respect of the waters and ports of the other, which, on the British theory, strangely enough, has not existed between British and American fishermen since the act of Congress of 1830, and will not exist if the treaty under consideration should go into effect.

In 1854, however, the objects of British and Canadian desire were at last accomplished by the conclusion of the treaty of the 5th of June of that year, by which an extensive reciprocity, so called, of trade was agreed upon, and the right granted to the Americans to fish within the limits prohibited by the treaty of 1818 under a variety of restrictions and limitations, and a similar right granted to British fishermen in the waters of the United States north of latitude 36°.

In the same treaty were various other provisions respecting navigation of the St. Lawrence, American and Canadian canals, etc., and the treaty was terminable on notice after the expiration of ten years. The experience of the United States and their citizens under that treaty led Congress to terminate it in the winter of 1864-'65 by a vote of nearly 2 to 1 in the House of Representatives and by a vote of nearly 5 to 1 in the Senate.

The Canadian Government then for a few years resorted to a system of licensing American fishermen to fish in the waters from which they were excluded for fishing purposes by the treaty of 1818. For the first year the number of licenses is reported to have been 354, at 50 cents per ton. The next year, 1867, the license fee was made \$1 per ton; the number of licenses is reported to have been 281. The next year, 1868-'69, the license fee was again doubled—\$2 per ton—and in 1868 only 56 licenses were taken out, and in 1869 only 25.

In 1868 the Dominion Government proceeded to enact the most harsh and stringent laws on the subject of American fishermen calculated and, it is thought, undoubtedly designed to so harass American fishermen in the exercise of the rights reserved to them by the treaty of 1818 as to cripple and destroy their operations. Analogous legislation by Newfoundland in 1836 had led the United States to remonstrate against it as a "violation of the well-established principles of the common law of England and of the principles of all just powers and of all civilized nations, and seemed to be expressly designed to enable Her Majesty's authorities, with perfect impunity, to seize and confiscate American vessels and embezzle almost indiscriminately the property of our citizens employed in the fisheries on the coasts of the British Possessions" (Ex. Doc. 100, Thirty-second Congress, first session).

In 1870 the British Government informed our own that the Canadian Government would issue no more licenses to American fishermen; and, notwithstanding the decision of the umpire in the case of the *Washington* in 1853, announced the British claim to the exclusion of the American fishing vessels from coming within British headlands, without regard to the width of the bay between. (See Report on Foreign Relations, 1870).

Then came the treaty of 1871, devoted primarily to the Alabama claims, but which provided that for the period of ten years fishermen of the United States should have, in addition to their rights under the treaty of 1818, the right of British North American in-shore fishing under certain limitations, etc.; and the United States agreed to the free admission of British North American fishery products into our country, and it was also provided that the British fishermen might fish in certain American waters, and that the balance of alleged advantage to the United States in these respects should be settled by a commission.

This commission, as is well known, by the vote of the British commissioner and the Belgian umpire, and against the vote of the American commissioner, fixed the sum to be paid by the United States at \$5,500,000. The gross injustice of this, as believed by the United States, led the Senate, on the 27th February, 1879, six years before the fisheries provision could expire by the terms of the treaty, to unanimously pass a resolution declaring that steps ought to be taken to provide for the earliest possible termination of these fishery arrangements by negotiations with the British Government to that end. It is under-

stood that the President of the United States, in pursuance of this recommendation, endeavored to obtain the agreement of Great Britain to an immediate termination of these clauses in the treaty, but without success.

In February, 1883, however, as the period was approaching when these provisions could be terminated on notice, both houses of Congress unanimously (or certainly without any division) passed resolutions terminating Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXX, and XXXII of said treaty, which articles covered the whole fishery subject as well as certain matters of navigation, etc. This termination took effect on July 1, 1885.

By the twenty-ninth article of the same treaty, which is still in force, the United States engaged that all goods, wares, and merchandise arriving at certain ports named and destined for the British possessions in North America, should have entry and transit without the payment of duty, and it was reciprocally agreed on the part of Great Britain that all goods, wares, and merchandise arriving at any of the ports of British North America and destined for the United States, should also have the right of free entry and transit to the United States, etc.

That the foregoing mentioned article of the treaty of 1871 covered and included the transmission of fish from American fishing vessels as well as other goods is evident, not only from the plain and comprehensive language of the article, but from the statements of the formal British case laid before the Halifax Commission in 1877, wherein the right of the transshipment of fish from Canadian ports to the United States free of duty, covered by that article, was made the ground of claim for compensation.

But it will be seen on inspection of the treaty of 1871 that the fisheries articles of that treaty contained no provision either in respect of any commercial rights in Canadian ports or in respect of transshipments, and that the reciprocal transshipment article of the treaty was entirely separate and distinct from any question of fisheries or fish as such; but the proceedings before that commission distinctly demonstrated that under article 29 the right to transship fish was understood by the British to be included and without any conditions depending upon the force of any other of the articles of the treaty, and it is also to be observed that the fisheries articles, in respect of their duration and termination, are treated of separately and by themselves in article 33, which provided that they, as a group by themselves, might be ter-

minated after ten years, on two years' notice, while the reciprocal transshipment article 29 was left to stand independently by itself.

It inevitably follows :

(1) That the right of American fishing vessels to transship their fish from Canadian ports to those of the United States was not derived from the fisheries articles and did not depend upon them.

(2) That such right clearly existed by force of article 29 and did not depend upon any other article, and

(3) That article 29, not having been terminated, the right of American fishing vessels to enter Canadian ports for the purpose of transshipping their cargoes is as clear and unquestionable as that of any other American vessels.

Under the treaty of 1871, with all the privileges granted to Americans in respect of fishing in British waters, the practical result was the diminution of American fishing interests and a corresponding large increase of the Canadian fishing interests, owing to the superior facilities of the Canadians in fishing near their own homes and their right guaranteed by that treaty to dispose of their fish in American ports free from all duties and impositions. It was this, doubtless, that led the British Government to refuse to terminate the fisheries article of 1871 when it had already obtained \$5,500,000 as the established recompense for the superior (alleged) advantages obtained by American fishermen under that treaty.

After the final termination of the fisheries articles of the treaty of 1871, it being apparent that the United States could not be persuaded or beguiled into a renewal of the so-called reciprocity with Canada, the former methods of unfriendly coercion and harassment were again resorted to and with great exaggeration. New Canadian laws, sanctioned by the home government, were enacted, calculated and evidently designed to effectually frustrate and destroy all the substantial rights that American fishermen were entitled to enjoy under the treaty of 1818, and to destroy the mutuality of the act of 1830 and the benefits of article 29 of the treaty of 1871.

Our Government remonstrated, at first mildly, and later on with something of the vigor that should belong to those intrusted with the defense of clear American rights. But these remonstrances, unaccompanied or followed by any further steps, were unavailing.

The President, in his annual message of December, 1885, in view of these circumstances, recommended to Congress the making provision

for a commission to adjust and settle the difficulties and disputes thus arisen, but Congress did not see fit to do it, and the Senate, on the 13th of April, 1886, adopted a resolution by a majority of 25 declaring that, in its judgment, no such commission ought to be established; and by a resolution of the 24th of July, 1886, proceeded to order an investigation by its committee on foreign relations into the fishery question and into the unjust treatment of our fishermen and the circumstances connected therewith, with a view, as it may be presumed, to taking such measures on the report of its committee as the interests and honor of the United States should require.

That committee made an exhaustive investigation, and without any dissent from any of its members reported to the Senate, on the 19th of January, 1887, upon the subject, stating the history of these difficulties and the clear rights that it was thought belonged to the United States and to their citizens, and recommended the enactment of a law for the protection of American rights.

Such a law was enacted, the bill passing the Senate by a vote of 46 in the affirmative to 1 in the negative, and passing the House of Representatives with an enlarging amendment by a vote of 256 in the affirmative to 1 in the negative.

On the passage of this law the only difference between the two houses was that concerning the extent to which these defensive measures should go. This act of Congress was approved by the President on the 3d of March, 1887, and is in the following words:

AN ACT to authorize the President of the United States to protect and defend the rights of American fishing vessels, American fishermen, American trading and other vessels, in certain cases, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are then or lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places, in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored

nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of, or within the United States, (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also, to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this act. Every violation of any such proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

Approved, March 3, 1887.

So far as is known to the committee, no step whatever was taken by the President to put this law into execution, but negotiations were initiated and continued, to the apparent end of accomplishing, what Congress had thought it unfit to undertake in such way, an adjustment of these difficulties by the diplomatic course of securing a part of American rights at the expense of yielding other and the most fundamental and important of them.

These negotiations culminated in the appointment by the President, during the recess of the Senate, on the 22d of November, 1887, only ten days before the meeting of Congress, of three "plenipotentiaries," to

consider, with like plenipotentiaries appointed by Her Majesty, the whole subject, with a view of coming to a solution thereof.

These plenipotentiaries, thus created, began their real work at Washington while both houses of Congress were sitting, and without any communication by the President in his annual message on the meeting of Congress, or otherwise, of the fact that such important and extraordinary operations were in progress, or that very grave interests of the United States had been placed in the custody of gentlemen whose names had not even been communicated to it.

These "plenipotentiaries" came to a conclusion of their labors on the 15th of February, 1888, and the offices of "plenipotentiaries" terminated, and the result was reached without the advice and consent of the Senate having been asked or taken concerning the selection of these public ministers, and without any communication to either house of Congress concerning this most important subject.

It is not difficult to see that, in evil times, when the President of the United States may be under influence of foreign and adverse interests, such a course of procedure might result in great disaster to the interests and even the safety of our Government and people.

It is no answer to this suggestion to say that an arrangement thus concluded can not be valid or effectual without the advice and consent of the Senate, for the rights and interests of the people of the United States might be so neglected, misunderstood, abandoned, or sold by President's "plenipotentiaries" as to greatly embarrass, if not defeat, their ultimate re-assertion in better times and under better administrations, though it is hoped that such will not be the case in respect of these negotiations.

The document submitted to the Senate by the President as the outcome of these negotiations may, it is thought, well illustrate the dangers of such methods.

But holding in reserve, for the time being, these grave questions touching usurpations of unconstitutional powers, or the abuse of those that may be thought to exist on the part of the Executive, the committee thinks it sufficient for the present occasion to deal with the document itself.

The subject with which, according to the message of the President transmitting it, this document professes to deal, is "the settlement of the questions growing out of the rights claimed by American fishermen in British North American waters." And the document opens with the

statement that it has to deal with "differences \* \* \* concerning the interpretation of Article I of the convention of October 20, 1818." The article referred to appears in an earlier part of this report.

The language of this article is, as has often been stated in long discussions upon the subject, perfectly clear. And as it respects the territorial limits wherein American fishermen should no longer have their ancient right of fishing, there has not been and can not be any question capable of discussion, other than that which may arise from the use of the words "bays," etc., of Her Majesty's dominions.

The article itself, in clear and unmistakable language, recognized and adopted 3 miles from the shore as the extreme limit of municipal dominion and exclusion, but it also used the words "bays," etc.—British bays—as included within the prohibited territory.

For many years after the conclusion of this treaty of 1818 there does not appear to have been any difficulty in respect of the exercise of the rights of American fishermen in bays along the British North American coast that were more than 6 miles wide at their entrance, thus following the description embraced in the 3-mile designation of municipal boundary.

But when the Canadians found that they could not have the same advantages enjoyed by American citizens, fishermen, in introducing their fish and other products into the United States on the same terms as our own citizens, a system of restrictive claim was adopted, and the pretension was set up that *any* bay, no matter how wide, indenting British North America, was a British bay, and that the American fishermen were by the treaty of 1818 forbidden to fish therein, and in 1843 the first seizure under that claim occurred. The American fishing vessel *Washington* was the vessel. What was decided and settled in her case has already been stated.

From that day to this no instance has been brought to the attention of the committee (among all the various and very numerous seizures of American fishing vessels by the British authorities under the claim of violations of the treaty of 1818) of any seizure of any American fishing vessel for the act of fishing in any bay indenting the British North American coast more than 3 miles from the shore.

It is curious to note that in the opening British case before the Halifax Commission, no mention is made of the headlands question that had from time to time been a subject of theoretical discussion between the two Governments. But after the case had been presented the question

was referred to, but it appears to have been dropped in view of the fact that fishing in such bays did not appear to be of any substantial value at that time. Thus the bay and headland matter stood when these last negotiations began.

The first article of the treaty now under consideration provides for the appointment of a mixed commission, to delimitate "the British waters, bays, creeks, and harbors of the coasts of Canada and of Newfoundland, as to which the United States, by Article I of the convention of October 20, 1818, between the United States and Great Britain, renounced forever any liberty to take, dry, or cure fish."

Certainly a delimitation of 3 miles from the shore could not possibly be made more clear than it was by the treaty of 1818. Monuments can not be set up in the sea which shall separate the waters of Her Majesty's dominions from the waters belonging to the fishermen and all other people of the United States in common with the rest of mankind.

The only possible point must be to describe what were British bays, etc., and if this article had only been devoted to naming the bays, etc., that were less than 6 miles wide, there might have been some thoretic ground for such an operation. But the treaty easily dismisses all such as a part of the coast line, and proceeds to show that the 3-mile limit mentioned in the treaty of 1818 is not the one that is to define the rights of citizens of the United States, but that a new and different principle, entirely favorable to Great Britain, is to be adopted. To this end the third article of the treaty provides that the 3 marine miles mentioned in the treaty of 1818—

shall be measured seaward from low-water mark; but at every bay, creek, or harbor, not otherwise specially provided for in this treaty, such 3 marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbor, in the part nearest the entrance at the first point where the width does not exceed *ten* marine miles.

By this simple British process the 3 miles mentioned in the treaty of 1818 is nearly doubled and extended to 5 miles from either shore at the entrance or along the bays indenting the coast. It needs no comment to show that this provision is not an execution of the treaty of 1818, but is making, by an assumed construction or otherwise, a new one of entirely different dimensions and entirely in the interest of Her Majesty's Government.

But this is not all. The "plenipotentiaries" went still further (not stopping at nearly doubling the area of British municipal dominion

measured by the treaty of 1818), and agreed that many of (and perhaps all the valuable) great bays, much more than 10 miles in width, should be forevermore included in British municipal dominion, and that forevermore no American fisherman should have the right to drop a line or cast a seine therein.

These great bodies of water, thus given up to the British, are named in the treaty as follows: (1) The Baie des Chaleurs; (2) Bay of Miramichi; (3) Egmont Bay; (4) St. Ann's Bay; (5) Fortune Bay; (6) Sir Charles Hamilton Sound; (7) Barrington Bay; (8) Chedabucto Bay; (9) Mira Bay; (10) Placentia Bay; (11) St. Mary's Bay.

These agreements contained in article 4 of the treaty, as has been said, really cede (so far as the United States are concerned) to Great Britain forever the complete dominion over these numerous and, for fishing purposes, the most valuable of the bays along the coasts of British North America, and exclude forever all the American fishing vessels therefrom, except for the limited and narrow purposes mentioned in the treaty of 1818, and recognize that by force of the treaty of 1818 these are and always have been British waters, while it is thought by the committee that by the public law of nations these same waters will be open to the vessels of all other countries than our own, unless they, too, shall, from generosity or fear, or for some consideration, renounce their right to use the same.

The principle on which this article is formed is a recognition by the United States of the municipal and territorial sovereignty of Great Britain in and over all the other bays, etc., on the British North American coast, however large, in which, by this treaty, our citizens are to be admitted to fish, exterior to a line 3 miles from shore.

The article in terms professes to delimit the *British bays mentioned in the treaty of 1818*, and as it mentions eleven such bays even more than 10 miles wide, and some of which are 20 or more miles wide, it follows that the British contention of municipal dominion over all bays without regard to width, is acted upon, and that the right of Americans to fish in the few other wide bays not mentioned is a grant by the British Government.

If the Baie de Chaleurs is a now British bay, so also must be the bay of Fundy and all the rest. But if it be suggested that the "plenipotentiaries" renounced the right of fishing in these bays as public waters (for which no hint appears in the treaty) in consideration of supposed advantages gained to the United States by other provisions of the

treaty, it is, the committee thinks, equally objectionable; and this entirely without regard to any present practical value or want of value of the fisheries therein. It is not thought by the committee to be suitable to the dignity or interests of the United States to renounce the right of its citizens to pursue business in any part of the public waters of the world. Such rights, the committee thinks, should neither be the subjects of purchase, sale, barter, nor gift.

The question of the extent of territorial dominion, as it respects the exercise of fishing rights in bays more than 6 miles wide indenting the shores of a country, must of course be determined by the law and practice of nations as they existed in the year 1818, at which time, as the committee thinks, the 3-miles limit from shores was recognized without regard to large indenting bays, except under very peculiar circumstances, such as the prescriptive exercise of dominion, etc. Whether, in view of recent inventions in the implements of warfare, it may not be politic for maritime nations to agree upon an enlargement of the boundaries of their territorial dominion seaward is a question well worthy of consideration, but it has no place in respect of the matters now in hand.

The supposed precedent for such agreements as are set up in this treaty, of the convention of 1882 (Ex. Doc. 113, p. 18), between Great Britain, Germany, Belgium, Denmark, France, and the Netherlands, is very far indeed from being such. That was for the *police regulation* of the fisheries in the North Sea, and on the coasts of all the contracting parties. It was limited to five years, and not perpetual, as this treaty is. It neither granted nor renounced any right. The freedom of navigation, etc., inside the 3-mile limit was reserved. The naval vessels of the respective powers were to enforce the regulation. For serious infractions not settled at sea the offending vessel was to be taken to a port of her own country for trial.

Such regulations as these just cited might well have formed a precedent for composing the differences between the United States and Great Britain; for, first, they did not admit territorial dominion as existing over bays more than 6 miles wide, but conferred it for the time being and for a limited purpose; second, they recognized the rights of fishing vessels to be considered as vessels entitled to the rights of all other vessels bearing the flag of their country, without regard to their occupation, so far as it respected every thing else than fishing; third, they placed the administration of these fishing affairs in the commanders

of national vessels; and, fourth, they provided that an accused vessel should be taken to her own country for trial.

The contrast between this North Sea fisheries treaty, to which Great Britain was a party, and the one now before the Senate is vivid. They are substantially the opposites of each other in nearly every particular.

Nor does the treaty now before the Senate bear any material resemblance to the protocol proposed by Mr. Seward in 1866 (Ex. Doc. 113, p. 17), nor to the scheme sent by Mr. Bayard to Mr. Phelps in November, 1886 (Ex. Doc. 113, Fiftieth Congress, first session, p. 17).

The fifth article of the treaty, declaring that the treaty shall not be construed to include within common waters any interior portions of bays, etc., that "can not be reached from the sea without passing within the 3 marine miles mentioned in Article I of the convention of October 20, 1818," is very sweeping, and may cover a great deal more than the mere reading of it would imply to one uninstructed in the nature of the northeastern lands and waters, with their deep indenting bays, their many islands and islets, and their tremendous tides, the rise and fall of which, in many places, change the aspects of nature to an astonishing degree. But it is purely language making the test the capacity of *passing* within 3 miles of the shore, and plainly indicates that no matter how large may be the bay, no matter how wide apart may be its headlands, no matter how deep may be the waters between such headlands at high tide, if the ship-channel to it at low tide be within 3 miles of land it is an excluded bay.

Having now seen what the proposed treaty accomplishes in respect of "delimitation," we proceed to examine its provisions in respect of what American vessels engaged in fishing on the high seas may and may not do in British North American waters ascertained, enlarged, and defined as before stated, and in the ports on those coasts.

In order to understand more clearly the disastrous nature of what the "plenipotentiaries" have agreed to, it is valuable to consider and again state the situation of affairs existing in 1818, and to which the treaty of that year applies.

Before and at that time and down to 1830 no American vessel of *any* kind was as of right admitted to any British North American port, and no rights of commerce or trade existed (with the few exceptions before stated); and, reciprocally, no British North American vessel of any

kind, fishing or other, was admitted to ports of the United States otherwise than as an act of mutuality in the cases stated. The treaties of 1794 and 1815 purposely left all these ports and all trade between British North America and the United States to be regulated according to the particular policy of each nation. Such is still the condition of things so far as any treaty obligation is concerned, excepting article 29 of the treaty of 1871.

In 1818, then, no American fishing vessel or any other American vessel could enter a port on any of the coasts of British North America, even where the full right of fishing in-shore existed. And the treaty of 1818, formed on that basis, was not intended to, and it did not in any way, touch the question of any trade or commercial right whatever, and of course made no distinction in these respects between fishing and other American vessels. It looked and spoke only in regard to the fact of the renunciation by the United States of their fishing rights in that part of the territorial waters of British North America named in the treaty, and, as an *incident* of that renunciation and as an incident only, it provided that American fishing vessels might enter those renounced waters, not to fish, but only for "the purpose of shelter and of repairing damages therein, of purchasing wood, and obtaining water;" and this right was to be exercised under such restrictions as should be necessary to prevent their fishing, etc., therein, or in any other manner abusing the privileges so reserved to them.

These words, "in any manner abusing the privilege of entry," clearly referred to the then existing state of British law which prevented all trade intercourse by foreign vessels with the provinces, and were intended to authorize such action on the part of Great Britain as should be justly necessary to prevent violations of British navigation and commercial laws.

But in the course of years, when after these mutual arrangements of a legislative character were made, the business and trade between the United States and British North America developed, the British North Americans, like their fellows in England, began to see that the American system of customs laws operated to the advantage of American citizens and industries and unfavorably to Canadian and British interests. They then commenced, and have since steadily continued (except during the intervals of so-called reciprocity, under the treaties of 1854 and 1871), a systematic and persistent course of hostile legislation and administration under the pretext of enforcing the restrictions of the

treaty of 1818, well calculated, and designed, as the committee thinks is clear, to so embarrass and harass the citizens of the United States, engaged in the legal pursuit of fishing on the high seas as well as in the British North American waters reserved to them by the treaties of 1783 and 1818, as to drive them out of the business, and so to leave it all in British hands, or else to induce the United States, by such a course of unfriendly and even outrageous conduct, to allow the free entry of Canadian fish and other products into our markets as the price of their fair treatment of our fishermen.

Yet, during the last two or three years of this course of studied injustice and of outrage, while no American fishing vessel, even bearing a full commercial character under the laws of the United States and with the flag of the United States at the fore, could enter a port of British North America for any purpose without being exposed to seizure and forfeiture, or enter a British North American harbor for shelter or to repair damages or obtain wood and water without being subjected to this unjust and even outrageous treatment, the fishing vessels of British North America could lawfully and without molestation enter any harbor or port of the United States, sell or transship their cargoes, and do every kind of trade, and depart in peace.

This condition of things became so intolerable that, at last, the remonstrances of the Executive became vigorous and urgent, and on the 8th of December, 1886, the President sent to Congress the following message on the subject:

*To the Senate and House of Representatives of the United States :*

I transmit herewith a letter from the Secretary of State, which is accompanied by the correspondence in relation to the rights of American fishermen in the British North American waters, and commend to your favorable consideration the suggestion that a commission be authorized by law to take perpetuating proofs of the losses sustained during the past year by American fishermen, owing to their unfriendly and unwarranted treatment by the local authorities of the maritime provinces of the Dominion of Canada.

I may have occasion hereafter to make further recommendations during the present session for such remedial legislation as may become necessary for the protection of the rights of our citizens engaged in the open-sea fisheries of the North Atlantic waters.

GROVER CLEVELAND.

EXECUTIVE MANSION,

*Washington, December 8, 1886.*

Justly influenced, doubtless, by this message and by the state of affairs shown in the documents accompanying it and by the evidence

taken by, and the report of the Senate Committee on Foreign Relations on the same subject made on the 19th of January, 1887 (Rep. No. 1683, 49th Cong., 2d sess.), Congress came to the conclusion that the period of negotiation and unavailing remonstrance had passed, and with almost absolute unanimity and without any party division enacted the act of March 3, 1887, hereinbefore mentioned, by which the duty was imposed upon the President of withdrawing from British North American vessels, etc., those liberties and advantages which by the pre-existing laws they were enjoying in the harbors and ports of the United States, whenever and as often as it should appear to him that similar rights and liberties were denied the United States fishing vessels, etc., in the ports, etc., of British North America, or whenever it should appear to him that American fishing vessels should have been subjected to outrageous or unjust treatment in the exercise of the rights secured to them by the treaty of 1818.

All that remained unprovided for according to the sense of self-respect and of just policy on the part of the United States was to obtain indemnity from the British Government for the injuries that had thus far been committed.

In view of this state of affairs, thus briefly mentioned, we come to consider what the proposed treaty undertakes to provide in regard to American vessels engaged in fishing.

The first clause of Article X provides that American fishing-vessels entering the bays or harbors referred to in Article I shall conform to harbor regulations common to them and Canadian fishing vessels. This, by necessary implication, concedes the right on the part of the Canadians to subject United States fishing vessels resorting to a British North American bay for shelter from a tempest, to the municipal laws of Canada, no matter how far different those regulations may be from the provision in the treaty of 1818 giving to the British the right only to make such restrictions as should be *necessary to prevent an abuse of the privilege* of entry for the purpose stated.

This clause adopts the principle of the British contention in the Fortune Bay affair, which contention was that American vessels in Canadian waters, under either the treaty of 1818 or 1871, were subjected to all the municipal laws of that country. This British contention was successfully resisted by Mr. Evarts, then our Secretary of State, and the

British Government paid an indemnity for an interference with our fishing vessels in respect of their being engaged in fishing in those waters contrary to the municipal statutes of Newfoundland.

This clause, then, gives away important American rights, and adopts the principle that under the treaty of 1818 American fishing vessels are subject to the full force of foreign municipal law. But this clause is, in part only, qualified by the next, which excuses them from reporting, entering, or clearing when putting into such bays for shelter or repairing damages, and when putting into the same *outside the limits of established ports of entry*, for the purpose of purchasing wood or obtaining water, with certain exceptions even in respect of that excuse. But we think it may be safely assumed to be true that there are very few, if any, British North American bays or harbors that are not within the limits of established ports of entry, for doubtless (which is the case in the United States) the Dominion customs laws bring every part of the seashore, and all its bays and harbors, within the customs limits of some port of entry.

This modification, then, of the sweeping requirement of the first clause really amounts to nothing, and, indeed, can (if it does not already) by a simple legislative or administrative act of the Dominion government bring every bay and harbor and every part of the coast within the limits of established ports of entry, and thus again completely surrender the fishing vessels of the United States to every commercial regulation of the Dominion government which operates against them, while it gives them almost none of the benefits of commercial intercourse.

The next clause, also, further provides that American fishing vessels, when in these bays and harbors for shelter, etc., under the treaty of 1818, shall not be liable for harbor dues, etc. This is a mere statement of what results from the treaty of 1818, for it has no application to these vessels other than in their purely fishing character, and in that character they were not subjected by the treaty of 1818 to any such imposition, and could not be, for none of them were necessary to prevent their fishing or to prevent their smuggling.

Article X, then, taken as a whole, is a diminution instead of an enlargement of the rights of American fishing vessels under the treaty of 1818, and its modifying and limiting clauses would be only valuable in any case as a renunciation by Great Britain of a totally unfounded pretension.

Article XI provides, first, that American fishing vessels entering the ports, etc., of British North America under stress of weather or other *casualty* may unload, reload, transship, or sell, subject to customs laws, all fish on board, when such unloading, transshipment, or sale is made *necessary as incidental to repairs*, and may replenish outfits, provisions, or supplies damaged or lost by disaster, and in case of death or sickness, shall be allowed all needful facilities, including the shipping of a crew.

The most of these provisions are already clearly covered by the treaty of 1818, and all of them are covered by the real substance and spirit of the arrangement of 1830; and in respect of transshipment, by article 29 of the treaty of 1871. They are much more than covered by article 29 of the treaty of 1871, and are, in fact and effect, a voluntary abandonment on the part of the United States of the rights secured in respect of the transshipment of all American goods and merchandise arriving at any British North American port. That article uses language of the most comprehensive character, and it can not be doubted that under it a Canadian fishing vessel bringing a cargo of fish from the fishing-grounds to the south of Nantucket, or from any other place on the high seas or any British waters, to the ports of New York, Boston, or Portland, would be entitled to land them and transship them to Canada without the payment of any duty, and it is, of course, equally clear that a cargo of fish on board a fishing vessel of the United States, when brought from the fishing-grounds of the high seas or elsewhere to any British North American port, may, in like manner, be entered and transshipped to the United States without the payment of duty.

It would seem, then, that in respect of the clause of Article XI, now under consideration, as well as with respect of the clauses hereinbefore considered, that the Executive in negotiating this treaty had failed to remember, or had left out of view, what the present rights of citizens of the United States already clearly are under treaties now in force, and had proceeded upon the idea that every right that the United States is to obtain by force of this treaty is a new one, and is granted by Her Majesty's Government in consideration of the renunciation to her of the great bodies of water mentioned in the earlier articles of this treaty and of all commercial rights not mentioned in this treaty.

The next paragraph of Article XI provides that *licenses* in British North American ports shall be granted to United States fishing vessels on the *homeward* voyage only, to purchase such provisions and supplies

as are ordinarily sold to trading vessels, but such provisions shall not be obtained by barter nor purchased for resale or traffic. A Canadian fishing vessel, on whatever voyage, either outward or inward, may now lawfully purchase anything in a port of the United States that any citizen of the United States can purchase, and on the same terms, without any license whatever, and may dispose of any such purchase without any restriction. How does it happen that the United States are to buy, or to accept as an act of generosity, the privilege for our fishing vessels only when they are on the way home, sufficient food to preserve them from starvation, and under the restriction that, being without money, they must not obtain it by the exchange either of fish-hooks or wearing apparel?

If all vessels of the United States, including those engaged in the occupation of catching fish on the high seas, are now, under the arrangements of 1830, entitled as of right to trade in British North American ports, this clause of Article XI surrenders nearly the whole of such right; but if, under the arrangements of 1830 or otherwise, American vessels engaged in fishing on the high seas have no right of entry into British North American ports and no right to trade therein, and their enjoyment of such privileges depends upon the legislative policy of the British Dominion government, can the United States, with the least sentiment of self-respect or with the least regard to American honor, accept such a privilege, so limited, without on the other hand limiting the privileges of similar Dominion vessels in the ports of the United States?

The United States is under no treaty obligation whatever in respect of Dominion fishing or any other vessels, other than those contained in the treaty of 1871 and all those, whatever they may be, are strictly mutual. The committee thinks that such an arrangement as is here proposed, and which necessarily implies that there can be no other or greater rights of American vessels than those here described, is utterly inadmissible unless it be conceded that the business of American citizens carried on on the high seas, hundreds of miles, in many instances, from British North American coasts, is and ought to be subjected in British North American ports to the free will and pleasure of the government of that country and they are to have few of the rights that, by the common intercourse of nations, are accorded to the vessels of all countries as acts of hospitality and humanity, and which by treaty or legislative arrangements of nearly all nations are accorded to

the citizens of each in the ports of the other upon perfectly mutual and equal terms, and never otherwise. If we are to buy hospitality why should we not sell it? If we are to submit to British regulations of any occupation on the high seas why should not British subjects in like manner submit to a similar control or exclusion of their vessels by the United States?

The last paragraph of Article XI appears to be thought by the President in his message communicating the treaty to give to our fishing vessels, whether on the homeward voyage or not, the right of purchasing provisions and supplies that ordinarily belongs to trading vessels. In this the committee thinks the President is much mistaken. The first clause of the paragraph provides for licenses to purchase supplies for "the homeward voyage." It then says that such vessels, having obtained the required licenses, shall also be accorded upon all occasions such *facilities* for the purchase of casual or needful supplies as are ordinarily accorded to trading vessels.

If these last-mentioned words have the meaning imputed to them by the President, the words immediately preceding are absolutely useless and can have no meaning whatever; for the privilege, if expressed, is included within those afterwards used, and as the two phrases stand in immediate connection with each other, the absurdity of their insertion in such a case could not possibly have been overlooked by any intelligent person. And if such a really broad provision as is supposed was intended to be inserted in the treaty—one which was intended to completely reverse the whole British pretension upon the subject, and put our fishing vessels, for all purposes of provisions and supplies, upon the same footing that British fishing vessels occupy in the United States and that American trading vessels do in the British provinces—it certainly should, and probably would, have been stated in language incapable of sincere misunderstanding.

What the committee thinks it means is that an American fishing vessel, having obtained a license to purchase provisions on and for the homeward voyage, which is all that the first clause says or describes, viz, the mere act of obtaining the license upon application, such vessel, having obtained such license, shall, upon all occasions to which the license, viz, upon all occasions of the homeward voyage, be accorded facilities for doing what the license says she may. This, the committee thinks, is the literal and grammatical construction of the paragraph, and all that can be extracted from it by the ordinary principles of construction.

The whole of this article, then, as it appears to the committee, is one that would be totally derogatory to the honor and interests of the United States to agree to. The committee can never recommend or agree that any American vessel or citizen shall receive less free and favorable treatment in any foreign port whatever than is accorded to the vessels or subjects of such foreign country by the laws and policy of the United States.

The subject of commercial rights, viewed in another aspect, compels the inquiry whether it is not entirely absurd to consider that if a British port existed on the southwestern or western coast of Newfoundland, or on the coast of Labrador, in respect of which, by the treaty of 1818, there is no exclusion of American vessels from territorial waters, such American vessel could, so far as the treaty of 1818 is concerned, enter such port for all and the same purposes that any other American vessel could, and that, under the same treaty, 50 miles to the eastward on the southern coast of Newfoundland, the very same American vessel should not now have any right of entry for the same purpose?

The twelfth article of the treaty under consideration provides that—

Fishing vessels of Canada and Newfoundland shall have on the Atlantic coast of the United States all the privileges reserved and secured by this treaty to United States fishing vessels in the aforesaid waters of Canada and Newfoundland.

If this article was intended to put Canadian fishing vessels upon the same footing only in American ports and waters that American vessels are put in Canadian ports and waters, there would be mutuality and equality, however narrow, in it. But this, evidently, was not the purpose of the article, for it is evident to the committee that Great Britain would not have consented to any such great diminution of the rights of her fishing vessels as they now exist in the ports and waters of the United States. The article itself, it will be seen, while somewhat obscure, is still drawn in such a way as only to be affirmative, and measures privileges, reserved and secured, and says nothing of conditions and limitations and nothing of ports, etc. But, however this may be, the committee does not think that it comports with the dignity or hospitality of the United States to deny to British North American fishing vessels or those of any other country the ordinary commercial rights, hospitalities, and humanities that are now supposed to be nearly universal among nations calling themselves civilized, unless, unhappily, they should be compelled to do so in order to induce just and hospitable treatment to the vessels of our own country.

The thirteenth article provides that the Secretary of the Treasury of the United States shall make regulations for the conspicuous exhibition by every United States fishing vessel of its official number on its bows, and that no vessel shall be entitled to the licenses provided in the treaty which shall fail to comply with such regulations. This provision on its face and taken literally applies to every fishing vessel of the United States, whether it is ever to enter Canadian waters or not, and it is a law to the Secretary of the Treasury of perpetual application.

But assuming, however mistaken the language may have been for this purpose, that it is only to apply to United States fishing vessels entering Canadian ports or waters, it is bad enough, for it proceeds upon the idea that vessels of the United States engaged in the occupation of fishing are to be put under a ban of specific apparel and appearance that is not imposed upon any other vessel.

By the article next preceding, and already commented upon, all Canadian fishing vessels are entitled in our waters to all the privileges that American fishing vessels are entitled to have in Canadian waters so far as it regards fishing, at least; but they are not required to be thus numbered and marked. A hundred Canadian fishing vessels may anchor in the harbor of Gloucester, the great fishing port of the United States, and be entitled to every right and every hospitality only upon the evidence of their papers, which show their nationality and that they are not pirates; but if a single American fishing vessel appears in the harbor of Halifax, and under the guns of Her Majesty's forts, she can not obtain any supplies, and her crew may starve at anchor unless upon each bow there is the number affixed by order of the Secretary of the Treasury of the United States. Certainly, American fishermen and, we should hope, every other American citizen would not be proud of such a distinction.

The fourteenth article of the treaty deals with the subject of penalties for fishing contrary to the treaty of 1818 and the first article of this treaty, and thereby the United States are to agree that such penalty may extend to forfeiture, etc. This is a singular provision (and probably unique) to be found in a treaty between two civilized nations, the general tenor of whose laws and the general social nature of whose institutions are very nearly homogeneous.

The article also provides for a limitation or an exception, as the case may be, of the legal penalties for other violations of fishery rights, three dollars a ton.

It also provides that the proceedings shall be summary and as inexpensive as practicable and that the trial shall be at the place of detention—the place of detention being left to the discretion of the seizing authorities, for without special provision the seized vessel could be taken to any port in the Dominion.

It then provides that security for costs shall not be required of the defense except when bail is offered; that is to say, that when a vessel, with all its furniture, tackle, apparel, and cargo, and its captain and all its crew are seized and arrested and taken to a place of detention, security for costs shall not be required until the arrested citizen of the United States shall desire to release his vessel or get out of prison.

This certainly must be only what every just government would provide of itself. The same may be said of all the other provisions of this article. They are all identical with or analogous to the practice of civilized governments, and rest upon common principles of good administration of justice. Surely they should need no treaty contract to bring them into practice.

The fifteenth article of the treaty is open and conditional, and provides that when the United States shall admit British North American fish oil, whale oil, seal oil, and fish of all kinds except fish preserved in oil, free of customs duties, the like products of the United States shall be admitted free into British North America, and it is also provided that in that case United States fishing vessels may be entitled—not to fish in-shore as the treaty of 1871 provided but—to annual *licenses* for the following purposes in British North America :

- (1) The purchase of provisions, bait, ice, seines, supplies, etc.
- (2) The transshipment of catch.
- (3) The shipping of crews, but that supplies shall not be obtained by barter.
- (4) And that the like privileges shall be *continued* or given to fishing vessels of British North America on the Atlantic coast of the United States.

This is a much worse “reciprocity” than existed under the treaty of 1871, for while the treaty of 1871 was silent in respect of commercial rights in either country and left the matter of the commercial rights standing upon mutual legislative regulations of the two countries, this treaty limits the rights of the fishing vessels to certain specified forms and descriptions of commercial privileges, though it does seem to recognize the truth that would otherwise appear to have been forgotten in

the negotiations, that Canadian fishing vessels now have commercial rights and privileges in the ports of the United States.

The impolicy of the general provisions of article 15 have already been twice fully demonstrated, and, on the last occasion of the kind, were unanimously abrogated by Congress. It is thought needless to now go into a discussion of that subject.

We have thus briefly reviewed all the substantial articles of the treaty of positive obligation excepting Article IX, which declares that nothing in the treaty shall affect the free navigation of the Strait of Canso. This article was evidently inserted on account of the renunciation by the United States of its rights in Chédabucto Bay—this bay being at the southern entrance of that strait.

It is almost unnecessary to say that the committee is fully sensible that in many matters of fair difference and of doubtful consideration between two governments, in order to arrive at an amicable composition thereof there must be mutual concessions, and that the same is true in respect of entering into new engagements for commercial and other intercourse between nations, in order that, in the last-named case, perfect mutuality of right and privilege may be had in respect of the same matters; but the committee does not think that the proposed treaty can be justified in this way.

This idea of concession was doubtless the ground and guide upon which the treaty of 1818 was founded. At the time of that treaty the United States claimed (and justly as the committee thinks) that the fishing rights recognized by the treaty of 1783 on all the shores of British North America were property rights and that they were not lost by the war of 1812, and that after the treaty of peace of 1814, which made no mention of the subject, those rights existed with all their original force.

The British Government insisted upon the contrary and that the right of citizens of the United States to fish in any British North American waters had been entirely lost. This led to a partition of the disputed territory—whether wise or unwise is immaterial to the present question—but in making this settlement the contracting parties had evidently in view the then understood law of nations, that territorial waters only extended to three miles from the shore; and they also had in view the then existing state of treaty and legal relations between Great Britain and the United States in respect of intercourse between the British North American Provinces and this country, and the treaty

provided in clear terms where, in British waters, United States fishermen might fish and where they might not.

The only possible question that could fairly arise under the treaty of 1818 was the question what was a British bay. But the question, as a practical one, has been in all the sixty-nine years since the making of that treaty of little or no account; for, so far as is known, the only seizure of an American vessel by the British authorities for fishing more than 3 miles from the shore in a bay more than 6 miles wide was the seizure of the *Washington*, in 1843, and in that case, as has been before stated, the international umpire decided the seizure to have been an illegal and unjust one.

What American fishermen standing in all other respects on the footing of other Americans engaged in business on the sea, might do in their character *as fishermen* in the territorial waters and harbors of British North America was clearly stated, and in language that would seem to have been incapable of sincere misunderstanding.

The whole of the substance of the present state of the difficulty and discord has arisen from the course of the British and Canadian legislation and administration, directed against the vessels and fishermen of the United States in respect of their coming into British North American ports or harbors or within three miles of their shores, either under treaty rights or commercial rights.

In view of the plain history of these transactions and of the matters hereinbefore stated, it does not seem to the committee that the existing matters of difficulty are subjects for treaty negotiation; and such appears to have been the opinion of the Senate by its action and by the remarks of many of its members of both political parties and by the action of the House of Representatives upon and in the passage of the act of March 3, 1887, and its approval by the President.

No new event or situation of affairs has arisen since that time, and the only real questions subsisting between the two countries in respect of the subject were those of reclamations by the United States for outrages upon its citizens, for which this treaty makes no provision, and the question of whether the mutual arrangements of 1830 and the mutual rights of transit under the treaty of 1871 shall continue.

This treaty makes no provision for an indemnity. It does make provision for establishing forever the full measure and limit of rights and privileges to be enjoyed by fishing vessels of the United States, whatever other character they may also have and appear in, in the ports and waters of British North America, and it thus surrenders rights

and privileges that the committee thinks are clearly and fully established under the arrangements of 1830, and the treaty of 1871, or, if such rights and privileges can be claimed not to exist in these respects, that it provides, as of original and perpetual engagement, for the exclusion of the American vessels engaged in a particular occupation on the high seas from the ordinary humanities and hospitalities and equalities enjoyed in the British North American ports by all other vessels of the United States, and, so far as is known, all the vessels of every character of every other country, while at the same time British North American vessels engaged in the same occupation and in the same seas have, without restraint, every right and facility of commerce, hospitality, and immunity in all the ports of the United States. To enter into such an engagement, finally and perpetually, as this, the committee thinks contrary to the dignity and just interests of the United States.

The committee regrets that these conclusions do not meet the approval of all its members. It had hoped, as has been the case generally hitherto, that no influences or divisions of a nature coincident with the lines of political parties would enter into a matter of this character, and that, as was the case only a little more than a year ago, all Senators of all political parties would unite in standing firmly in the attitude taken in the winter of 1886-'87 and culminating in the act of March 3, 1887, and in declining, at whatever cost, to enter into any new engagements with the British Government that should leave any American citizen, engaged in whatever occupation or business, deprived of any right or privilege, other than fishing, in any British North American or other waters, that is or may be granted to citizens of the United States engaged in any other occupation, and that have been and are fully and freely granted by the United States to every British subject, whatever may be his occupation.

The committee thinks it due to the Senate to state that, contrary (as it believes) to the universal previous practice of the Executive in connection with the consideration of treaties when the Senate has asked for all the papers and information in detail concerning the progress of the negotiations, the Executive has not thought it for the "public interest," in this instance, to communicate all such papers and such detailed information to the Senate, although the Senate requested it; and it was stated in reply to the resolution of request that the deliberations of the pleni-

potentiaries were in confidence, and "that only results should be announced and such other matters as the joint protocolists should sign under the direction of the plenipotentiaries."

It is, however, stated that every point submitted to conference is covered by papers already in possession of the Senate, excepting the question of damages sustained by our fishermen, and which, it is stated, was met by a counter-claim for damages to British vessels in the Behring Sea. It is then added that—

To the discretion and control of the Executive are intrusted the initiation and conduct of the negotiation of treaties, and without the guaranty of mutual and implicit confidence between the agents, negotiations for the voluntary adjustment of vexed questions in controversy between nations could not hopefully be entered upon.

It thus appears to be claimed by the Executive that the Senate, without whose advice and consent no treaty can be concluded, has no right to be informed, confidentially, of the course of negotiations and discussions and the various propositions and arguments *pro* and *con* arising in the negotiation of a treaty. The committee feels it to be their duty to protest against any such assumption. It believes that such a claim is contrary to the essential nature of the constitutional relations between the President and the Senate on such subjects, and that it is the reverse of the continuous practice in such matters from the commencement of the Government to this time.

The principal points of the treaty, etc., that have been considered by the committee in the foregoing statement and discussion may be summarized substantially as follows:

#### SUMMARY.

I. The United States recognize as British territory and renounce forever all claim of independent right in all the great bays along the British North American coasts, named in the treaty, and admit that all such bays form a part of and are within British territorial sovereignty and jurisdiction.

II. Of the few of such great bays that are left to be visited by American fisherman the larger part are understood to be valueless, and some of them are subject to French fishery rights older than our own, if they are British bays.

III. If bay fishing is not profitable now it may be in the future.

IV. Whether profitable or not, the United States ought not to give up, upon any consideration whatever, the right of its vessels of every character to visit and carry on business in any part of the public seas.

V. The treaty surrenders the claim and right of the United States, which has been acted upon and exercised for now more than a century, of its vessels engaged in fishing or other occupations to visit and carry on their business in these great bays, and the principle of which claim and right has once been solemnly decided against Great Britain by a tribunal organized under a treaty with that Government.

VI. The new area of delimitation described in the treaty greatly increases the danger of our fishermen unintentionally invading prohibited waters, and thereby exposing them to seizures and penalties.

VII. The treaty, by its fifth article, renounces any right of the United States in any bay, etc., however large, that "can not be reached from the sea without *passing* within the 3 marine miles mentioned in article 1 of the convention of October 20, 1818," thus excluding vessels of the United States from all waters, however extensive, and the distance between whose headlands is however great, the sailing channel to which may happen to be within 3 miles of the shore.

VIII. The treaty is a complete surrender of any claim of a right now existing either under the treaty of 1783, the treaty of 1818, the acts of Congress and the British orders in council of 1830, or the twenty-ninth article of the treaty of 1871, for vessels of the United States engaged in fishing anywhere on the high seas, and even having a commercial character also, to enter any port of British North America for any commercial purpose whatever, and puts in the place of these clear rights, which, in respect of British fishing vessels, exist in the United States to the fullest extent, greatly restricted and conditional rights as arising solely from a present grant of Great Britain.

IX. It binds the United States to be content with whatever is given by this treaty as the full measure of its rights, and to be content with it forever, or until greater hospitality and freedom of intercourse can be obtained by further concessions or considerations on our part.

X. In the face of all this it leaves British North American fishing vessels possessed of all commercial rights in all the ports and waters of the United States.

XI. Whatever privileges of commerce, hospitality, or humanity are thus provided for in the treaty are to be obtained only upon condition that no fishing vessel of the United States shall receive any of them unless such fishing vessel shall, under regulations of the Secretary of the Treasury of the United States, be branded with an official number on each bow, and that such regulation shall, before they become effectual, be communicated to Her Majesty's Government.

XII. It provides that general, and even then, much limited, commercial rights and rights of transshipment, as mentioned in article fifteen, shall be obtained only at the price of exempting all Canadian fishery products from our custom duties.

XIII. Its provisions concerning the executive and judicial treatment of American vessels and fishermen that may be seized or arrested for supposed illegal conduct are, to make the most of them, nothing other, and probably something less, than a statement of what the laws and conduct of any administration of every government professing to be civilized should adopt and exercise as an act of duty and justice.

XIV. Instead of diminishing sources of irritation and causes of difficulty, different interpretations and disputes, it will, the committee thinks, very largely increase them.

Various other suggestions adverse to the wisdom of ratifying this treaty might easily be made, but the committee does not think it necessary to go into them.

The committee can not but hope, that if these ill-advised negotiations, which, as is known to all the world, can not properly commit the United States in any degree until they shall have received the constitutional assent of the Senate, shall fail to meet the approval of this body, Her Majesty's Government will take measures to secure justice and fair treatment in her North American dominions to American vessels and American citizens, in all respects and under all circumstances, and that that Government will see the justice and propriety of according to American vessels engaged in the business of fishing all the commercial rights and facilities in her North American ports that are so freely and cheerfully accorded to her own in the ports of the United States, and that thus the friendship and good feeling which ought to exist between neighboring nations may be finally established and secured.

JOHN SHERMAN.  
GEO. F. EDMUNDS.  
WM. P. FRYE.  
WM. M. EVARTS.  
J. N. DOLPH.

MAY 7, 1888.

## VIEWS OF THE MINORITY OF THE COMMITTEE ON FOREIGN RELATIONS

UPON THE

*Treaty signed on the 15th February, 1888; by the plenipotentiaries of the United States and Great Britain, dissenting from the report of the majority of that committee, which recommends that the Senate refuse to advise and consent to the ratification of said treaty.*

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The minority of the Committee on Foreign Relations dissent from the report of the majority recommending the rejection of the treaty with Great Britain dated February 15, 1888, and submitted to the Senate for its consideration, and present the following as their principal reasons for their dissent :

Two objections to this treaty were stated in committee.

(1) That it had been negotiated and signed by persons who were not duly empowered, under the Constitution and laws of the United States, to conduct and conclude a treaty.

(2) That the treaty, on its merits, should not be ratified by the Senate.

To meet the first objection, a member of the minority of the committee introduced the following resolution :

*Resolved*, That the treaty signed by Thomas F. Bayard, William L. Putnam, and James B. Angell, as plenipotentiaries of the United States, in conjunction with the British plenipotentiaries, on the 15th day of February, 1888, and sent to the Senate by the President as a treaty duly negotiated, for the consideration and action of the Senate, is properly authenticated as a treaty made by the President of the United States, acting within his constitutional powers, and is lawful and valid as a negotiation.

The purpose of this resolution was to bring before the Senate, in distinct form, the recommendation of the committee as to the merits of the treaty, apart from any collateral matter relating to the negotiation of the instrument.

In committee, this resolution was laid upon the table, and thereby any recommendation as to the question it presents, in answer to the first objection to the treaty, as above stated, was avoided.

The minority of the committee hold that it is entirely competent for a majority in the Senate to declare that the treaty has been negotiated and signed in a proper manner, and by persons duly qualified, or otherwise to return it to the President as a paper that does not call into exercise the powers and jurisdiction of the Senate upon the question of its ratification by them. And, if a majority in the Senate shall declare that the treaty is sent to the Senate by the President and is duly signed and authenticated, or if no objection to it on that ground is made, then the subject-matter of the treaty is in order and should be considered by the Senate.

It is not disputed, or, so far as the undersigned are informed, doubted, by any one that the Senate may accept and ratify, on the part of the United States, any treaty that the President has made with a foreign government, that he sends to the Senate for consideration, and may waive any informality attending its negotiation.

In accepting the paper sent to the Senate by the President as a treaty, and by referring the same to its committee, the Senate have virtually waived any informality, if there is any, in the negotiation and signing of the instrument, and the undersigned conceive that the whole duty of the committee was to consider and report upon the merits of the treaty.

The undersigned will, therefore, present their views upon the substance of the treaty, first, and will then state the reasons that force them to the conclusion that there can be no just ground for the rejection of the treaty, growing out of the manner of its negotiation.

If it is better for the country that the treaty should be ratified, the rejection of it for matters that are merely formal or technical, in so grave an emergency as is now presented in connection with this old and harassing controversy, would be a serious injury to the country.

The undersigned believe that it is better for our country that the treaty should be ratified, and they are equally convinced that the entire class of our people who are actively engaged in our North Atlantic fishing industry will be benefited by its ratification.

The first article of the treaty of 1818 is as follows:

Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland; from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company. And that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but, so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

Articles 18 to 25, both inclusive, of the treaty of 1871, covered the whole subject of the fishing rights and liberties between the United States and the British North American colonies, "*in addition*" to those secured by the treaty of 1818. No other articles in the treaty of 1871 related to the fisheries, or the rights of fishermen. When the United States abrogated these articles, that completely ended the influence of that treaty over our fishing rights. Article 29 was not terminated, but it never had the least reference to the fisheries treaty of 1818, to enlarge its scope, change its meaning, or in any way to affect any right to which that treaty related. Yet, if that is not the true meaning of the 29th article of the treaty of 1871, this present treaty in no way affects that article, and it stands for all that it was ever worth in favor of our fishermen.

## I.

GENERAL STATEMENT OF THE SITUATION WHICH HAS RESULTED FROM THE "MISUNDERSTANDING" AS TO THE TRUE MEANING OF THE TREATY OF 1818.

During seventy years the people of the United States and of the British North American provinces in the northeast have been frequently engaged in contention and dispute, in controversy and conflict, about the true interpretation of the fisheries treaty of 1818.

The most frequent and serious disagreements have arisen under the *proviso* to the first article, which is as follows:

*Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, and of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

This proviso, as it was proposed by our negotiators, contained the words "and bait" after the word "water." These words were stricken out, with the consent of our Commissioners. The right to obtain bait was thus finally disposed of as a treaty right.

In this proviso the four distinct "privileges hereby reserved to" American fishermen are stated definitely, while "such restrictions as may be necessary to prevent" them in any manner from "abusing the privileges" reserved to them are not defined, except in the most general terms.

American fishermen are placed "under such restrictions" with no guaranty as to the jurisdiction, whether provincial or imperial, that shall promulgate and enforce them; or whether they shall be declared by legislative authority, or administered by executive authority or by the judiciary.

It was contemplated in this treaty that further definitions on these delicate questions should be settled, either by the future agreement of the treaty powers, or that Great Britain should choose the tribunals that would declare and enforce these "restrictions" against American fishermen, subject only to the requirement that they should be "such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

That controversies would arise under this uncertain definition of the power to prescribe restrictions to our fishermen in the enjoyment of

positive treaty rights was as certain in 1818 as seventy years' experience has proven it to be, in an unfortunate history.

It was probably expected in 1818 that the good sense of the people and the good will of their Governments would enable them to arrange these indefinite "restrictions" by precedent and acquiescence, and thus adopt a series of regulations, the justice and propriety of which all would admit. But such hopes, if they were entertained, have been disappointed, and the eager rivalry that a very lucrative employment has stimulated has involved the people and their Governments in dangerous controversies as to the "restrictions" that were left without accurate definition in the proviso to the first article of the treaty of 1818.

Efforts have been made, that were for a time successful, to compose these and other troublesome questions growing out of article 1 of the treaty of 1818, by new treaty arrangements relating to the fisheries in British waters on the northeastern coasts.

In the treaty of 1854 the repose of these questions was secured for a time for the consideration of a liberal reciprocity extending to a variety of subjects. The right of the free navigation of the St. Lawrence River was included in that reciprocal agreement, and was made perpetual by the reciprocity treaty of 1871.

In the treaty of 1871 we again put these questions to rest for a time by the promise of enough money to equalize the possible advantages of the Canadian and other fisheries over those on our coast north of 39° north latitude.

Neither of these arrangements proved satisfactory to us as to the fisheries, and they were terminated by the United States.

In addition to these efforts, our diplomatists have employed every argument that seemed possible, through many years of laborious correspondence and conference, to find a ground of mutual understanding and consent as to the true interpretation of the treaty of 1818.

Without attempting to state all the cases of warnings, seizures, fines, and confiscations, of searches and captures and other rigorous applications of "restrictions" that have been visited upon our fishermen, it is painfully true that they have been very numerous, frequently very aggravated, and have caused our fishermen great expense and serious losses.

Every fishing season, when the reciprocity treaties were not in force, has added to these complications and rendered their solution more difficult.

That very little progress has been made in reaching a common basis of agreement in the solution of these contentions and conflicting constructions of the proviso in article 1 of the treaty of 1818, or in respect of the headland theory (which is based, as we understand, upon the language of that proviso and the preceding parts of that section, and not upon the principles of international law), is apparent from the citations of cases that have arisen since 1818, presently to be made.

Instead of a nearer approach to such an understanding as to a true and mutually acceptable construction of the first article of the treaty, a wider divergence of opinion and a more determined contention have characterized the diplomacy of both the treaty powers.

We seem now to have reached a point where we must seek to allay the growing bitterness of these differences by a friendly, sincere, and mutually respectful consideration of the positions assumed by each Government, or else we must enforce our views by vigorous measures of retaliation.

It seems to have become necessary to make such modifications of that treaty as are suggested by our changed commercial relations since 1818, and also by our methods of fishing with purse seines and of preserving fish in ice and snow, which have grown up into almost entirely new systems, with new attending wants, in the past thirty years.

The gradual abridgment of our right to land and cure fish on the shores of the British possessions, as the country along the shores should become populated, was provided for in the treaties of 1783, 1818, 1854, and 1871. This feature in a treaty is thought to be entirely novel. It relates to a future expected change in the condition of the then uninhabited coasts of British America. It certainly suggests in a forcible way that it was contemplated that future modifications of the treaties would be necessary to meet these changed conditions when they should occur.

The progress of civilization on the North American continent, with the necessary increase of commerce and of improvement in every industry, has wrought changes in the condition of the people which have demanded, from time to time, changes in the treaty relations of the adjoining countries that were indispensable.

The right of navigating the Mississippi and St. Lawrence Rivers, as now agreed upon, is a most forcible illustration of this necessity for an international policy, modified by international agreement, that will provide for the mutual wants and advantage of these adjoining countries as the occasion demands.

An inflexible adherence to the literal construction of ancient agreements that have become too narrow for the convenience of either country, whether it results from national jealousy or commercial rivalry, creates an incubus upon the progress of the communities concerned that is derogatory to those who refuse to yield their prejudices.

Mr. Bayard, in presenting to the consideration of the British Government the reasons for a more liberal interpretation of the treaty of 1818, and for an enlargement of the privileges of our fishermen in the colonial ports, strongly urged the necessity for this relaxation of the strict and literal construction placed by that Government on that treaty, because of the growth of the commerce of both countries, the building of vast lines of railways, the increase of population, the enlarged demand for the products of the fisheries, and the more intimate commercial and social relations of the people.

Such considerations demand careful attention, and are, of themselves, sufficient reasons to induce both Governments to lay aside prejudices and resentments, and to induce their people to cultivate friendly relations, rather than to put their welfare at hazard by fostering ill-will towards each other, resulting in continual strife.

To show the very serious results of a different policy, the undersigned present the following statement of cases that have arisen out of the conflicting views as to the meaning of the first article of the treaty of 1818. It is probably far short of the full list of cases that have actually occurred, but it is large enough to disclose the fact that wide and serious differences have existed since 1819 in the interpretation of that treaty, attended with complaints and remonstrances and protests, followed by diplomatic correspondence, and at times threatening the gravest consequences to the peace of the two countries.

In all the long list of cases that are here referred to only in one case, that of *The Washington*, seized for fishing in the Bay of Fundy in 1843, has any reparation been made for any wrong done our fishermen under the treaty of 1818.

Reparation was not, indeed, demanded in any such case until 1886.

*List of cases above referred to.*

1. June 26, 1822, *L'Orient* seized, taken to St. John, and condemned September 14, 1822.
2. In 1823, *Charles of York*, Maine, seized by the *Argus* and taken into port for trial.
3. July 18, 1824, *Gallion* seized, taken to St. John, and condemned August 16, 1824.
4. July 18, 1824, *William* seized, taken to St. John, and condemned August 16, 1824.
5. October 7, 1824, *Escape* seized, taken to St. John, and condemned November 18, 1824.

6. October 7, 1824, *Rover* seized, taken to St. John, and condemned November 18, 1824.
7. October 7, 1824, *Sea Flower* seized, taken to St. John, and condemned November 18, 1824.
8. June 1, 1838, *Hero* seized, taken to Halifax, and condemned January 23, 1839.
9. November 1, 1838, *Combene* seized, taken to Halifax, and condemned January 23, 1839.
10. May —, 1839, *Java* seized, taken to Halifax, and condemned August 5, 1839.
11. June 4, 1839, *Shetland* seized, taken to Halifax, and condemned July 8, 1839.
12. May 26, 1839, *Independence* seized, taken to Halifax, and condemned August 5, 1839.
13. May 25, 1839, *Magnolia* seized, taken to Halifax, and condemned August 5, 1839.
14. May —, 1839, *Hart* seized, taken to Halifax, and condemned August 5, 1839.
15. June —, 1839, *Batelle* seized, taken to Halifax, and condemned July 8, 1839.
16. June 14, 1839, *Hyder Ally* seized, taken to Halifax, and condemned July 8, 1839.
17. June 14, 1839, *Eliza* seized, taken to Halifax, and condemned July 8, 1839.
18. June —, 1839, *May Flower* seized, taken to Halifax, and restored to its owners.
19. June 2, 1840, *Papineau* seized, taken to Halifax, and condemned July 10, 1840.
20. June 2, 1840, *Mary* seized, taken to Halifax, and condemned July 10, 1840.
21. September 11, 1840, *Alms* seized, taken to Halifax, and condemned December 8, 1840.
22. September 18, 1840, *Director* seized, taken to Halifax, and condemned December 8, 1840.
23. October 1, 1840, *Ocean* seized, taken to Halifax, and condemned December 8, 1840.
24. May 6, 1841, *Pioneer* seized, taken to Halifax, and condemned August 18, 1841.
25. May 20, 1841, *Two Friends* seized, taken to Halifax, and restored.
26. September 20, 1841, *Mars* seized, taken to Halifax, and condemned November 2, 1841.
27. September 20, 1841, *Egret* seized, taken to Halifax, and condemned November 2, 1841.
28. October 13, 1841, *Warrior* seized, taken to Halifax, and condemned November 9, 1841.
29. October 13, 1841, *Hope* seized, taken to Halifax, and restored.
30. October 13, 1841, *May Flower* seized, taken to Halifax, and condemned December 7, 1841.
31. May 7, 1843, *Washington* seized, taken to Halifax, and condemned August 1, 1843.
32. In 1844, *Argus* seized by the *Sylph*, off the coast of Cape Breton, when "fifteen miles from any land." "This was the second seizure under the new construction of the treaty of 1818."
33. In 1845, "an American fisherman \* \* \* was seized in the Bay of Fundy, at anchor inside the light-house at the entrance of Digby Gut."

38. October 29, 1851, *Tiber* seized, but there is no information as to the disposition made of it.
39. June 16, 1852, *Coral* seized, taken to St. John, and condemned July 23, 1852.
40. July 20, 1852, *Union* seized, taken to Charlottetown, and condemned September 24, 1852.
41. August 5, 1852, *Florida* seized, taken to Charlottetown, and condemned September 7, 1852.
42. September 11, 1852, *Caroline Knight* seized, taken to Charlottetown, and condemned.
43. In 1852, *Golden Rule* detained and taken to Charlottetown, and liberated on the owner acknowledging violation of the treaty and that the liberation was an act of clemency.
44. November 16, 1869, Vice-Admiral Wellesley reported that during the past season 162 vessels had been boarded by the British cruisers, of which 131 within the three-mile limit had been warned once, and 19 had been warned twice.

In 1870 the following eleven (11) vessels were seized and taken into the provincial ports, some of which were condemned, while others, perhaps, were liberated: June 27, *Wampatuck* (condemned); June 30, *J. H. Nickerson* (taken to Halifax); August 27, *Lizzie A. Tarr* (condemned); September 30, *A. H. Wonson* (taken to Halifax); October 15, *A. J. Franklin* (taken to Halifax); November 8, *Romp*; November 25, *White Fawn* (taken to St. John); and *S. G. Marshall*, *Albert*, and *Clara F. Friend*.

In January, 1878, the *Fred. P. Frye*, *Mary M.*, *Lizzie* and *Namari*, *Edward E. Webster*, *William E. McDonald*, *Crest of the Wave*, *F. A. Smith*, *Hereward*, *Moses Adams*, *Charles E. Warren*, *Moro Castle*, *Wild-fire*, *Maud* and *Effie*, *Isaac Rich*, *Bunker Hill*, *Bonanza*, *Moses Knowlton*, *H. M. Rogers*, *John W. Bray*, *Maud B. Wetherell*, *New England*, and *Ontario* were driven from Long Harbor in Fortune Bay by the violence of a mob, which destroyed some of their seines, and did not again that season return to their fishing-grounds. Twenty-two vessels were included in this list, the interference with which was made the occasion of a separate and important correspondence, conducted, on our side, chiefly by Mr. Evarts, Secretary of State.

The following lists are taken from the subjoined correspondence of Secretary Bayard and Professor Baird with Mr. Edmunds, chairman of the Committee on Foreign Relations :

*Revised list of vessels involved in the controversy with the Canadian authorities.*

DEPARTMENT OF STATE,

of the list, heretofore furnished by this Department to the committee, of all American vessels seized, warned, fined, or detained by the Canadian authorities during the year 1886, I now inclose the same.

Every such instance is therein chronologically enumerated, with a statement of the general facts attendant.

Very respectfully, yours,

T. F. BAYARD.

Hon. GEORGE F. EDMUNDS,

*United States Senate.*

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*List of American vessels seized, detained, or warned off from Canadian ports during the last year.*

1. *Sarah B. Putnam*. Beverly, Mass.; Charles Randolph, master. Driven from harbor of Pubnico in storm March 22, 1886.
2. *Joseph Story*. Gloucester, Mass. Detained by customs officers at Baddeck, N. S., in April, 1886, for alleged violation of the customs laws. Released after twenty-four hours' detention.
3. *Seth Stockbridge*. Gloucester, Mass.; Antone Olson, master. Warned off from St. Andrews, N. B., about April 30, 1886.
4. *Annie M. Jordan*. Gloucester, Mass.; Alexander Haine, master. Warned off at St. Andrews, N. B., about May 4, 1886.
5. *David J. Adams*. Gloucester, Mass.; Alden Kinney, master. Seized at Digby, Nova Scotia, May 7, 1886, for alleged violation of treaty of 1818, act of 59, George III, and act of 1883. Two suits brought in vice-admiralty court at Halifax for penalties. Protest filed May 12. Suits pending still, and vessel not yet released apparently.
6. *Susie Cooper*. (Hooper?) Gloucester?, Mass. Boarded and searched, and crew rudely treated, by Canadian officials in Canso Bay, Nova Scotia, May, 1886.
7. *Ella M. Doughty*. Portland, Me.; Warren A. Doughty, master. Seized at St. Ann's, Cape Breton, May 17, 1886, for alleged violation of the customs laws. Suit was instituted in vice-admiralty court at Halifax, Nova Scotia, but was subsequently abandoned, and vessel was released June 29, 1886.
8. *Jennie and Julia*. Eastport, Me.; W. H. Travis, master. Warned off at Digby, Nova Scotia, by customs officers, May 13, 1886.
9. *Lucy Ann*. Gloucester, Mass.; Joseph H. Smith, master. Warned off at Yarmouth, Nova Scotia, May 29, 1886.
10. *Matthew Keany*. Gloucester, Mass. Detained at Souris, Prince Edward Island, one day for alleged violation of customs laws, about May 31, 1886.
11. *James A. Garfield*. Gloucester, Mass. Threatened, about June 1, 1886, with seizure for having purchased bait in a Canadian harbor.
12. *Martha W. Bradly*. Gloucester, Mass.; J. F. Ventier, master. Warned off at Canso, Nova Scotia, between June 1 and 8, 1886

14. *Mascot*. Gloucester, Mass.; Alexander McEachern, master. Warned off at Port Anherst, Magdalen Islands, June 10, 1886.
15. *Thomas F. Bayard*. Gloucester, Mass.; James McDonald, master. Warned off at Bonne Bay, Newfoundland, June 12, 1886.
16. *James G. Craig*. Portland, Me.; Webber, master. Crew refused privilege of landing for necessaries at Brooklyn, Nova Scotia, June 15 or 16, 1886.
17. *City Point*. Portland, Me.; Keene, master. Detained at Shelburne, Nova Scotia, July 2, 1886, for alleged violation of customs laws. Penalty of \$400 demanded. Money deposited, under protest, July 12, and in addition \$120 costs deposited July 14. Fine and costs refunded July 21, and vessel released August 26. Harbor dues exacted August 26, notwithstanding vessel had been refused all the privileges of entry.
18. *C. P. Harrington*. Portland, Me.; Frellick, master. Detained at Shelburne, Nova Scotia, July 3, 1886, for alleged violation of customs laws; fined \$400 July 5; fine deposited, under protest, July 12; \$120 costs deposited July 14; refunded July 21, and vessel released.
19. *Hereward*. Gloucester, Mass.; McDonald, master. Detained two days at Canso, Nova Scotia, about July 3, 1886, for shipping seamen contrary to port laws.
20. *G. W. Cushing*. Portland, Me.; Jewett, master. Detained July (by another report, June) 3, 1886, at Shelburne, Nova Scotia, for alleged violation of the customs laws; fined \$400; money deposited with collector at Halifax about July 12 or 14, and \$120 for costs deposited 14th; costs refunded July 21, and vessel released.
21. *Golden Hind*. Gloucester, Mass.; Ruben Cameron, master. Warned off at Bay of Chaleurs, Nova Scotia, on or about July 23, 1886.
22. *Novelly*. Portland, Me.; H. A. Joyce, master. Warned off at Pictou, Nova Scotia, June 29, 1886, where vessel had entered for coal and water; also refused entrance at Anherst, Nova Scotia, July 24.
23. *N. J. Miller*. Booth Bay, Me.; Dickson, master. Detained at Hopewell Cape, New Brunswick, for alleged violation of customs laws, on July 24, 1886. Fined \$400.
24. *Rattler*. Gloucester, Mass.; A. F. Cunningham, master. Warned off at Canso, Nova Scotia, June, 1886. Detained in port of Shelburne, Nova Scotia, where vessel entered seeking shelter August 3, 1886. Kept under guard all night and released on the 4th.
25. *Caroline Vought*. Booth Bay, Me.; Charles S. Reed, master. Warned off at Paspebiac, New Brunswick, and refused water, August 4, 1886.
26. *Shiloh*. Gloucester, Mass.; Charles Nevit, master. Boarded at Liverpool, Nova Scotia, August 9, and subjected to rude surveillance.
27. *Julia Ellen*. Booth Bay, Me.; Burnes, master. Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.
28. *Freddie W. Allton*. Provincetown, Mass.; Allton, master. Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.
29. *Howard Holbrook*. Gloucester, Mass. Detained

30. *A. R. Crittenden*, Gloucester, Mass.; Bain, master. Detained at Hawkesbury, Nova Scotia, August 27, 1886, for alleged violation of customs laws. Four hundred dollars penalty deposited August 28 without protest, and vessel released. Three hundred and seventy-five dollars remitted, and a nominal fine of \$25 imposed.
31. *Mollie Adams*, Gloucester, Mass.; Solomon Jacobs, master. Warned off into storm from Straits of Canso, Nova Scotia, August 31, 1886.
32. *Highland Light*. Wellfleet, Mass.; J. H. Ryder, master. Seized off East Point, Prince Edward Island, September 1, 1886, while fishing within prohibited line. Suit for forfeiture begun in vice-admiralty court at Charlottetown. Hearing set for September 20, but postponed to September 30. Master admitted the charge and confessed judgment. Vessel condemned and sold December 14. Purchased by Canadian Government.
33. *Pearl Nelson*, Provincetown, Mass.; Kemp, master. Detained at Arichat, Cape Breton, September 8, 1886, for alleged violation of customs laws. Released September 9, on deposit of \$200. Deposit refunded October 26, 1886.
34. *Pioneer*, Gloucester, Mass.; F. F. Cruched, master. Warned off at Canso, Nova Scotia, September 9, 1886.
35. *Everett Steel*, Gloucester, Mass.; Charles H. Forbes, master. Detained at Shelburne, Nova Scotia, September 10, 1886, for alleged violation of customs laws. Released by order from Ottawa, September 11, 1886.
36. *Moro Castle*, Gloucester, Mass.; Edwin M. Joyce, master. Detained at Hawkesbury, Nova Scotia, September 11, 1886, on charge of having smuggled goods into Chester, Nova Scotia, in 1884, and also of violating customs laws. A deposit of \$1,600 demanded. Vessel discharged November 29, 1886, on payment, by agreement, of \$1,000 to Canadian Government.
37. *William D. Daisley*, Gloucester, Mass.; J. E. Gorman, master. Detained at Souris, Prince Edward Island, October 4, 1886, for alleged violation of customs law. Fined \$400, and released on payment; \$375 of the fine remitted.
38. *Laura Sayward*, Gloucester, Mass.; Medeo Rose, master. Refused privilege of landing to buy provisions at Shelburne, Nova Scotia, October 5, 1886.
39. *Marion Grimes*, Gloucester, Mass. Detained at Shelburne, Nova Scotia, October 9, for violation of port laws in failing to report at custom-house on entering. Fined \$400. Money paid under protest and vessel released. Fine remitted December 4, 1886.
40. *Jennie Seaverns*, Gloucester, Mass.; Joseph Tupper, master. Refused privilege of landing, and vessel placed under guard at Liverpool, Nova Scotia, October 20, 1886.
41. *Flying Scud*, Gloucester, Mass. Detained for alleged violation of customs laws at Halifax, November 1, or about that time. Released November 16, 1886.
42. *Sarah H. Prior*, Boston, Mass. Refused the restoration of a lost seine, which was found by a Canadian schooner, December 1886.
43. *Boat* (name unknown). Stephen R. Balcom, master, Eastport, Me. Warned off at St. Andrews, New Brunswick, July 9, 1886, with others.
44. *Two small boats* (unnamed); Charles Smith, Pembroke, Me., master. Seized at East Quaddy, New Brunswick, September 1, 188

45. *Druid* (foreign built). Gloucester, Mass. Seized, warned off, or molested otherwise at some time prior to September 6, 1886.
46. *Abbey A. Snow*. Injury to this vessel has not been reported to the Department of State.
47. *Eliza A. Thomas*. Injury to this vessel has not been reported to the Department of State.
48. *Wide-Awake*. Eastport, Me.; William Foley, master. Fined at L'Etang, New Brunswick, \$75 for taking away fish without getting a clearance; again November 13, 1886, at St. George, New Brunswick, fined \$20 for similar offense. In both cases he was proceeding to obtain clearances.

## U. S. COMMISSION OF FISH AND FISHERIES,

*Washington, D. C., February 5, 1887.*

SIR: I forward herewith, for your information, a copy of a communication from Mr. R. Edward Earll, in charge of the Division of Fisheries of this Commission, accompanied by a list of New England fishing vessels which have been inconvenienced in their fishing operations by the Canadian authorities during the past season; these being in addition to the vessels mentioned in the revised list of vessels involved in the controversy with the Canadian authorities. furnished to your committee on January 26 by the Secretary of State.

The papers containing the statements were received from the owners, masters, or agents of the vessels concerned, and, though not accompanied by affidavits, are believed to be correct.

Very respectfully, yours,

SPENCER F. BAIRD,

*Commissioner.*

HON. GEORGE F. EDMUNDS,

*Chairman Committee on Foreign Relations, United States Senate.*

## U. S. COMMISSION OF FISH AND FISHERIES,

*Washington, D. C., February 5, 1887.*

SIR: Sometime since, at your request, I mailed circulars to owners or agents of all New England vessels employed in the food-fish fisheries. These called for full statistics of the vessels' operations during the year 1886, and, in addition, for statements of any inconveniences to which the vessels had been subjected by the recent action of the Canadian Government in denying to American fishing vessels the right to buy bait, ice, or other supplies in its ports, or in placing unusual restrictions on the use of its harbors for shelter.

A very large percentage of the replies to these circulars have already been received, and an examination of same shows that, in addition to the vessels mentioned in the revised list transmitted by the Secretary of State to the Committee on Foreign Relations of the United States Senate on January 26, 1887, sixty-eight other New England fishing vessels have been subjected to treatment which neither the treaty of 1813 nor the principles of international

I inclose for your consideration a list of these vessels, together with a brief abstract of the statements of the owners or masters regarding the treatment received. The statements were not accompanied by affidavits, but are believed to be entirely reliable. The name and address of the informant are given in each instance.

Very respectfully, yours,

R. EDWARD EARLL,  
*In charge Division of Fisheries.*

Prof. SPENCER F. BAIRD,  
*U. S. Commissioner of Fish and Fisheries.*

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PARTIAL LIST OF VESSELS INVOLVED IN THE FISHERIES CONTROVERSY WITH THE  
CANADIAN AUTHORITIES, FROM INFORMATION FURNISHED TO THE UNITED STATES  
COMMISSIONER OF FISH AND FISHERIES.

[Supplementing a list transmitted to the Committee on Foreign Relations, United States Senate, by  
the Secretary of State, January 26, 1887.]

1. *Eliza A. Thomes* (schooner). Portland, Me.; E. S. Bibbs, master. Wrecked on Nova Scotia shore, and unable to obtain assistance. Crew not permitted to land or to save anything until permission was received from captain of cutter. Canadian officials placed guard over fish saved, and everything saved from wreck narrowly escaped confiscation. (From statements of C. D. Thomes, owner, Portland, Me.)
2. *Christina Ellsworth* (schooner). Eastport, Me.; James Ellsworth, master. Entered Port Hastings, Cape Breton, for wood; anchored at 10 o'clock, and reported at custom-house. At 2 o'clock was boarded by captain of cutter Hector and ordered to sea, being forced to leave without wood. In every harbor entered was refused privilege of buying anything. Anchored under lee of land in no harbor, but was compelled to enter at custom-house. In no two harbors were the fees alike. (From statements of James Ellsworth, owner and master, Eastport, Me.)
3. *Mary E. Whorf* (schooner). Wellfleet, Mass.; Simon Berrio, master. In July, 1886, lost seine off North Cape, Prince Edward Island, and not allowed to make any repairs on shore, causing a broken voyage and a long delay. Ran short of provisions, and being denied privilege of buying any on land, had to obtain from another American vessel. (From statements of Freeman A. Snow, owner, Wellfleet, Mass.)
4. *Stowell Sherman* (schooner). Provincetown, Mass.; S. F. Hatch, master. Not allowed to purchase necessary supplies, and obliged to report at custom-houses, situated at distant and inconvenient places; ordered out of harbors in stress of weather, namely, out of Cascumpee harbor, Prince Edward Island, nineteen hours after entry, and out of Malpeque harbor, Prince Edward Island, fifteen hours after entry, wind then blowing too hard to admit of fishing. Returned home with broken trip. (From statements of Samuel T. Hatch, owner and master, Provincetown, Mass.)

5. *Walter L. Rich* (schooner). Wellfleet, Mass.; Obadiah Rich, master. Ordered out of Malpeque, P. E. I., in unsuitable weather for fishing, having been in harbor only twelve hours. Denied right to purchase provisions. Forced to enter at custom-house at Port Hawkesbury, C. B., on Sunday, collector fearing that vessel would leave before Monday and he would thereby lose his fee. (From statements of Obadiah Rich, owner and master, Wellfleet, Mass.)
6. *Bertha D. Nickerson* (schooner). Booth Bay, Me.; N. E. Nickerson, master. Occasioned considerable expense by being denied Canadian harbors to procure crew, and detained in spring while waiting for men to come from Nova Scotia. (From statements of S. Nickerson & Sons, owners, Booth Bay, Me.)
7. *Newell B. Hawes* (schooner). Wellfleet, Mass.; Thomas C. Kennedy, master. Refused privilege of buying provisions in ports on Bay Saint Lawrence, and in consequence obliged to leave for home with half a cargo. Made harbor at Shelburne, Nova Scotia, in face of storm, at 5 p. m., and master immediately started for custom-house, 5 miles distant, meeting captain of cutter *Terror* on way, to whom he explained errand. On returning, found two armed men from cutter on his vessel. At 7 o'clock next morning was ordered to sea, but refused to go in the heavy fog. At 9 o'clock the fog lifted slightly, and, though the barometer was very low and a storm imminent, vessel was forced to leave. Soon met the heavy gale, which split sails, causing considerable damage. Captain of *Terror* denied claim to right of remaining in harbor twenty-four hours. (From statements of T. C. Kennedy, part owner and master, Wellfleet, Mass.)
8. *Helen F. Trelick* (schooner), Cape Porpoise, Me.; R. J. Nunan, master. July 20 1886, entered Port Latour, N. S., for shelter and water. Was ordered immediately to sea. (From statements of R. J. Nunan, owner and master, Cape Porpoise, Me.)
9. *Nellie M. Snow* (schooner), Wellfleet, Mass.; A. E. Snow, master. Was not allowed to purchase provisions in any Canadian ports, or to refit or land and ship fish, consequently obliged to leave for home with broken trip. Not permitted to remain in ports longer than local Canadian officials saw fit. (From statements of J. C. Young, owner, Wellfleet, Mass.)
10. *Gertrude Summers* (schooner), Wellfleet, Mass.; N. S. Snow, master. Refused privilege of purchasing provisions, which resulted in injury to voyage. Found harbor regulations uncertain. Sometimes could remain in port twenty-four hours, again was ordered out in three hours. (From statements of N. S. Snow, owner and master, Wellfleet, Mass.)
11. *Charles R. Washington* (schooner), Wellfleet, Mass.; Jesse S. Snow, master. Master was informed by collector at Ship Harbor, C. B., that if he bought provisions, even if actually necessary, he would be subject to a fine of \$400 for each offense. Refused permission by the collector at Souris, P. E. I., to buy provisions, and was compelled to return home September 10, before close of fishing season. Was obliged to report at custom-house every time he entered a harbor, even if only for shelter. Found no regularity in the amount of fees demanded, this being apparently at the option of the collector. (From statements of Jesse S. Snow, owner and master, Wellfleet, Mass.)

12. *John M. Ball* (schooner), Provincetown, Mass.; N. W. Freeman, master. Driven out of Gulf of St. Lawrence to avoid fine of \$400 for landing two men in the port of Malpeque, P. E. I. Was denied all supplies, except wood and water, in same port. (From statements of N. W. Freeman, owner and master, Provincetown, Mass.)
13. *Zephyr* (schooner), Eastport, Me.; Warren Pulk, master. Cleared from Eastport, May 31, 1886, under register for West Isles, N. B., to buy herring. Collector refused to enter vessel, telling captain that if he bought fish, which were plenty at the time, the vessel would be seized. Returned to Eastport, losing about a week, which resulted in considerable loss to owner and crew. (From statements of Guilford Mitchell, owner, Eastport, Me.)
14. *Abdon Keene* (schooner), Bremen, Me.; William C. Keene, master. Was not allowed to ship or land crew at Nova Scotia ports, and owner had to pay for their transportation to Maine. (From statements of William C. Keene, owner and master, Bremen, Me.)
15. *William Keene* (schooner), Portland, Me.; Daniel Kimball, master. Not allowed to ship a man or to send a man ashore except for water, at Liverpool, N. S., and ordered to sea as soon as water was obtained. (From statements of Henry Trefethen, owner, Peak's Island, Me.)
16. *John Nye* (schooner), Swan's Island, Me.; W. L. Joyce, master. After paying entry fees and harbor dues was not allowed to buy provisions at Malpeque, P. E. I., and had to return home for same, making a broken trip. (From statements of W. L. Joyce, owner and master, Atlantic, Me.)
17. *Asa H. Pervere* (schooner), Wellfleet, Mass.; A. B. Gore, master. Entered harbor for shelter; ordered out after 24 hours. Denied right to purchase food. (From statements of S. W. Kemp, agent, Wellfleet, Mass.)
18. *Nathan Cleaves* (schooner). Wellfleet, Mass.; P. E. Hickman, master. Ran short of provisions, and, not being permitted to buy, left for home with a broken voyage. Customs officer at Port Mulgrave, Nova Scotia, would allow purchase of provisions for homeward passage, but not to continue fishing. (From statements of Parker E. Hickman, owner and master, Wellfleet, Mass.)
19. *Frank G. Rich* (schooner). Wellfleet, Mass.; Charles A. Gorham, master. Not permitted to buy provisions or to lay in Canadian ports over twenty-four hours. (From statements of Charles A. Gorham, owner and master, Wellfleet, Mass.)
20. *Emma O. Curtis* (schooner). Provincetown, Mass.; Elisha Rich, master. Not allowed to purchase provisions, and therefore obliged to return home. (From statements of Elisha Rich, owner and master, Provincetown, Mass.)
21. *Pleiades* (schooner). Wellfleet, Mass.; F. W. Snow, master. Driven from harbor within twenty-four hours after entering. Not allowed to ship or discharge men under penalty of \$400. (From statements of F. W. Snow, owner and master, Wellfleet, Mass.)
22. *Charles F. Atwood* (schooner). Wellfleet, Mass.; Michael Burrows, master. Captain was not permitted to refit vessel or to buy supplies, and when out of food had to return home. Found Canadians disposed to harass him and put him to many inconveniences. Not allowed to land seine on Canadian shore for purpose of repairing same. (From statements of Michael Burrows, owner and master, Wellfleet, Mass.)

23. *Gertie May* (schooner). Portland, Me.; I. Doughty, master. Not allowed, though provided with permit to touch and trade, to purchase fresh bait in Nova Scotia, and driven from harbors. (From statements of Charles F. Guptill, owner, Portland, Me.)
24. *Margaret S. Smith* (schooner). Portland, Me.; Lincoln W. Jewett, master. Twice compelled to return home from Bay of St. Lawrence with broken trip, not being able to secure provisions to continue fishing. Incurred many petty inconveniences in regard to customs regulations. (From statements of A. M. Smith, owner, Portland, Me.)
25. *Elsie M. Smith* (schooner). Portland, Me.; Enoch Bulger, master. Came home with half fare, not being able to get provisions to continue fishing. Lost seine in a heavy gale rather than be annoyed by customs regulations when seeking shelter. (From statements of A. M. Smith, Portland, Me.)
26. *Fannie A. Spurling* (schooner). Portland, Me.; Caleb Parris, master. Subject to many annoyances, and obliged to return home with a half fare, not being able to procure provisions. (From statements of A. M. Smith, owner, Portland, Me.)
27. *Carleton Bell* (schooner). Booth Bay, Me.; Seth W. Eldridge, master. Occasioned considerable expense by being denied right to procure crew in Canadian harbors, and detained in spring while waiting for men to come from Nova Scotia. (From statements of S. Nickerson & Sons, owners, Booth Bay, Me.)
28. *Abbie M. Deering* (schooner). Portland, Me.; Emory Gott, master. Not being able to procure provisions, obliged to return home with a third of a fare of mackerel. (From statements of A. M. Smith, owner, Portland, Me.)
29. *Cora Louisa* (schooner). Booth Bay, Me.; Obed Harris, master. Could get no provisions in Canadian ports and had to return home before getting full fare of fish. (From statements of S. Nickerson & Sons, owners, Booth Bay, Me.)
30. *Eben Dale* (schooner). North Haven, Me.; R. G. Babbidge, master. Not permitted to buy bait, ice, or to trade in any way. Driven out of harbors, and unreasonable restrictions whenever near the land. (From statements of R. G. Babbidge, owner and master, Pulpit Harbor, Me.)
31. *Charles Haskell* (schooner). North Haven, Me.; Daniel Thurston, master. Obligated to leave Gulf of St. Lawrence at considerable loss, not being allowed to buy provisions. (From statements of C. S. Staples, owner, North Haven, Me.)
32. *Willie Parkman* (schooner). North Haven, Me.; William H. Banks, master. Unable to get supplies while in Gulf of St. Lawrence, which necessitated returning home at great loss, with a broken voyage. (From statements of William H. Banks, owner and master, North Haven, Me.)
33. *D. D. Geyer* (schooner). Portland, Me.; John K. Craig, master. Being refused privilege of touching at a Nova Scotia port to take on resident crew already engaged, owner was obliged to provide passage for men to Portland, at considerable cost, causing great loss of time. (From statements of F. H. Jordan, owner, Portland, Me.)

34. *Good Templar* (schooner). Portland, Me.; Elias Tarlton, master. Touched at La Have, Nova Scotia, to take on crew already engaged, but was refused privilege and ordered to proceed. The men being indispensable to voyage, had them delivered on board outside of three-limit by a Nova Scotia boat. (From statements of Henry Trefethen, owner, Peak's Island, Maine.)
35. *Eddie Davidson* (schooner). Wellfleet, Mass.; John D. Snow, master. June 12, 1886, touched at Cape Island, Nova Scotia, but was not permitted to take on part of crew. Boarded by customs officer and ordered to sail within twenty-four hours. Not allowed to buy food in ports on Gulf of St. Lawrence. (From statements of John D. Snow, owner and master, Wellfleet, Mass.)
36. *Alice P. Higgins* (schooner). Wellfleet, Mass.; Alvin W. Cobb, master. Driven from harbors twice in stress of weather. (From statements of Alvin W. Cobb, master, Wellfleet, Mass.)
37. *Cynosure* (schooner). Booth Bay, Me.; L. Rush, master. Was obliged to return home before securing a full cargo, not being permitted to purchase provisions in Nova Scotia. (From statements of S. Nickerson & Sons, owners, Booth Bay, Me.)
38. *Naiad* (schooner). Lubec, Me.; Walter Kennedy, master. Presented frontier license (heretofore acceptable) on arriving at St. George, N. B., but collector would not recognize same; was compelled to return to Eastport and clear under register before being allowed to purchase herring, thus losing one trip. (From statements of Walter Kennedy, master, Lubec, Me.)
39. *Louisa A. Grout* (schooner). Provincetown, Mass.; Joseph Hatch, jr., master. Took permit to touch and trade; arrived at St. Peter's, Cape Breton, in afternoon of May 19, 1886; entered and cleared according to law; was obliged to take inexperienced men at their own prices to complete fishing crew, to get to sea before the arrival of a seizing officer who had started from Straits of Canso at 5 o'clock same afternoon in search of vessel, having been advised by telegraph of the shipping of men. (From statements of Joseph Hatch, jr., owner and master, Provincetown, Mass.)
40. *Lottie E. Hopkins* (schooner). Vinal Haven, Me.; Emery J. Hopkins, master. Refused permission to buy any article of food in Canadian ports. Obtained shelter in harbors only by entering at custom-house. (From statement of Emery J. Hopkins, owner and master, North Haven, Me.)
41. *Florine F. Nickerson* (schooner). Chatham, Mass.; Nathaniel E. Eldridge, master. Engaged fishermen for vessel at Liverpool, Nova Scotia, but action of Canadian Government necessitated the paying of their transportation to the United States and loss of time to vessel while awaiting their arrival; otherwise would have called for them on way to fishing-grounds. Returning, touched at Liverpool, but immediately on anchoring, Canadian officials came aboard and refused permission for men to go ashore. Captain at once signified his intention of immediately proceeding on passage, but officer prevented his departure until he had reported at custom-house, vessel being thereby detained two days. (From statement of Kendrick & Bearse, owners, South Harwich, Mass.)

42. *B. B. B.* (sloop), Eastport, Me.; George W. Copp, master. Obligated to discontinue business of buying sardine herring in New Brunswick ports for Eastport canneries, as local customs regulations were, during the season of 1886, made so exacting that it was impossible to comply with them without risk of the fish becoming stale and spoiled by detention. (From statements of George W. Copp, master, Eastport, Me.)
43. *Sir Knight* (schooner). Southport, Me.; Mark Rand, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing-grounds. (From statements of William T. Maddocks, owner, Southport, Me.)
44. *Uncle Joe* (schooner), Southport, Me.; J. W. Pierce, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing-grounds. (From statements of William T. Maddox, owner, Southport, Me.)
45. *Willie G.* (schooner). Southport, Me.; Albert F. Orne, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing-grounds. (From statements of William T. Maddocks, owner, Southport, Me.)
46. *Lady Elgin* (schooner). Southport, Me.; George W. Pierce, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)
47. *John H. Kennedy* (schooner). Portland, Me.; David Dougherty, master. Called at a Nova Scotia port for bait, but left without obtaining same, fearing seizure and fine, returning home with a broken voyage. At a Newfoundland port was charged \$16 light-house dues, giving draft on owners for same, which, being excessive, they refused to pay. (From statements of E. G. Willard, owner, Portland, Me.)
48. *Ripley Ropes* (schooner). Southport, Me.; C. E. Hare, master. Vessel ready to sail when telegram from authorities at Ottawa refused permission to touch at Canadian ports to ship men; consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne & Son, owners, Southport, Me.)
49. *Jennie Armstrong* (schooner). Southport, Me.; A. O. Webber, master. Vessel ready to sail when telegram from authorities at Ottawa refused permission to touch at Canadian ports to ship men; consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne & Son, owners, Southport, Me.)
50. *Vanguard* (schooner). Southport, Me.; C. C. Dyer, master. Vessel ready to sail when telegram from authorities refused permission to touch at Canadian ports to ship men; consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne & Son, owners, Southport, Me.)
51. *Electric Flash* (schooner). North Haven, Me.; Aaron Smith, master. Unable to obtain supplies in Canadian ports and obliged to return home before obtaining full cargo. (From statements of Aaron Smith, master and agent, North Haven, Me.)

52. *Daniel Simmons* (schooner). Swan's Island, Me.; John A. Gott, master. Compelled to go without necessary outfit while fishing in Gulf of St. Lawrence. (From statements of M. Stimpson, owner, Swan's Island, Me.)
53. *Grover Cleveland* (schooner). Boston, Mass.; George Lakeman, master. Compelled to return home with only partial fare of mackerel, being refused supplies in Canadian ports. (From statements of B. F. De Butts, owner, Boston, Mass.)
54. *Andrew Burnham* (schooner). Boston, Mass.; Nathan F. Blake, master. Not allowed to buy provisions or to land and ship fish to Boston, thereby losing valuable time for fishing. (From statements of B. F. De Butts, owner, Boston, Mass.)
55. *Harry G. French* (schooner). Gloucester, Mass.; John Chisholm, master. Refused permission to purchase any provisions or to land cargo for shipment to the United States. (From statements of John Chisholm, owner and master, Gloucester, Mass.)
56. *Col. J. H. French* (schooner). Gloucester, Mass.; William Harris, master. Was refused permission to purchase any supplies, or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)
57. *W. H. Wellington* (schooner). Gloucester, Mass.; D. S. Nickerson, master. Was refused permission to purchase any supplies, or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)
58. *Ralph Hodgdon* (schooner). Gloucester, Mass.; Thomas F. Hodgdon, master. Was refused permission to purchase any supplies, or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)
59. *Hattie Evelyn* (schooner). Gloucester, Mass.; James A. Cromwell, master. Not allowed to buy any provisions in any provincial ports, and thereby compelled to return home during the fishing season, causing broken voyage and great loss. (From statements of James A. Cromwell, owner and master, Gloucester, Mass.)
60. *Emma W. Brown* (schooner). Gloucester, Mass.; John McFarland, master. Was forbidden buying any provisions at provincial ports, and thereby lost three weeks' time, and was compelled to return home with only part of cargo. (From statements of John McFarland, master, Gloucester, Mass.)
61. *Mary H. Thomas* (schooner). Gloucester, Mass.; Henry B. Thomas, master. Prohibited from buying provisions, and, in consequence, had to return home before close of fishing season. (From statements of Henry B. Thomas, owner and master, Gloucester, Mass.)
62. *Hattie B. West* (schooner). Gloucester, Mass.; C. H. Jackman, master. Prevented from buying provisions to enable vessel to continue fishing. Two of crew deserted in a Canadian port, and captain went ashore to report at custom-house and to secure return of men. Was delayed by customs officer not being at his post, and ordered to sea by first officer of cutter *Howlett* before having an opportunity of reporting at custom-house or of finishing business. Had to return

and report on same day or be subject to fine. Prevented from shipping men at same place. At Port Hawkesbury, Nova Scotia, while on homeward passage, not allowed to take on board crew of seized American fishing schooner *Moro Castle*, who desired to return home. (From statements of C. H. Jackman, master, Gloucester, Mass.)

63. *Ethel Maud* (schooner). Gloucester, Mass.; George H. Martin, master. Provided with a United States permit to touch and trade, entered Tignish, Prince Edward Island, to purchase salt and barrels. Was prohibited from buying anything. Collector was offered permit, but declared it to be worthless, and would not examine it. Vessel obliged to return home for articles mentioned. On second trip was not permitted to get any food. (From statements of George H. Martin, owner and master, East Gloucester, Mass.)
64. *John W. Bray* (schooner). Gloucester, Mass.; George McLean, master. "On account of extreme prohibitory measures of the Canadian Government in refusing shelter, supplies, and other conveniences, was obliged to abandon her voyage and come home without fish." (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)
65. *Henry W. Lonsfellow* (schooner). Gloucester, Mass.; W. W. King, master. Obligated to leave the Gulf of St. Lawrence with only 62 barrels of mackerel, on account of restrictions imposed by Canadian Government in preventing captain from procuring necessary supplies to continue fishing. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)
66. *Rushlight* (schooner). Gloucester, Mass.; James L. Kenney, master. Compelled to leave Gulf of St. Lawrence with only 90 barrels of mackerel, because of restrictions imposed by Canadian Government in prohibiting captain from purchasing supplies needed to continue fishing. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)
67. *Belle Franklin* (schooner). Gloucester, Mass.; Henry D. Kendrick, master. Obligated to leave Gulf of St. Lawrence with 156 barrels of mackerel, on account of restrictions imposed by Canadian Government in denying to captain the right to procure necessary supplies to continue fishing. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)
68. *Neponset* (schooner). Boston, Mass.; E. S. Frye, master. August 27, 1886, anchored in Port Hawkesbury, C. B., and immediately reported at custom-house. Being short of provisions, master asked collector for permission to buy, but was twice refused. The master, expressing his intention of seeing the United States consul at Port Hastings, C. B., 3 miles distant, the customs officer forbade him landing at that port to see the consul. He did so, however, saw the consul, but could get no aid, the consul stating that if provisions were furnished the vessel would be seized. Master being sick and wishing to return home by rail, at the suggestion of the consul he landed secretly and traveled through the woods to the station, 3 miles distant. (From statements of E. S. Frye, owner and master, Boston, Mass.)

In 1886 700 vessels were boarded, and 1,362 in 1887, to investigate their conduct, of which 30 were brought to the attention of the British Government.

These lists comprise, in all, nearly 400 vessels that have been involved in seizures and other interferences growing out of disputed constructions of the treaty of 1818.

That so many cases have arisen out of this conflict of opinion is, in part, fairly attributable to an aggressive temper on the part of the Canadians, which has not been successfully restrained by the Government of Great Britain, and to an obstinate adherence to the letter of the treaty, to the sacrifice of its spirit and to the prejudice of the "liberties" and "privileges" secured by its terms to American fishermen, as our Government understands the matter.

The treaty had reference to extensive lines of sea-coast upon which the bays, harbors, and creeks were as well known by name and location in 1818 as they are now, but they were not exactly described in that instrument.

It can not be assumed, at least in our diplomacy, that it is irrational or uncandid for the British Government to contend that the entrance of these places, so well known, was intended to designate a base-line from which to measure the 3-mile limit, within which we forever renounced the right to take or cure or dry fish.

Our construction has been that we did not renounce these "liberties" in the bays, harbors, and creeks, except within 3 miles of the coasts thereof, while the British contention has been that the word "coasts" in the treaty relates only to the open sea-coasts, and not to the coasts of bays, harbors, and creeks that are claimed and controlled by the provincial governments as territorial waters.

The British contention is also fortified by the argument, as they insist, that, in the proviso to article 1 of the treaty, our right to enter for shelter, wood, water, and repairs, is limited to "bays or harbors" and does not extend to "creeks" or to "coasts," and that these were not opened to our right of entry, because of the difficulty of enforcing the "restrictions" upon the use of these privileges, to which we gave our consent in the treaty, on the coasts and creeks, at places remote from their ports.

It has been the duty of our diplomatists, forced upon them by the importance of our interests, to endeavor to overcome these contentions of the British Government, and to insist upon a more liberal construction of the treaty.

The task has not been an easy one, and the progress we have made is scarcely discernible; for no admitted change in British opinion seems

to have been accomplished in respect of the exclusion, from our treaty rights of fishery, of the creeks, bays, and harbors whose names, limits, and location were known, and were recognized by their laws as territorial waters in 1818, except in reference to the Bay of Fundy.

In 1854 and in 1871 we submerged these questions beneath others of great importance, and paid heavily, in reciprocal tariff arrangements in one case, and in money in the other instance, for the security and protection of our fishermen against the British head-land theory, as they claimed it, in territorial waters, and for the right of inshore fishing.

On the other branch of the subject, relating to the promulgation and enforcement of "such restrictions as may be necessary to prevent \* \* \* abusing the privileges \* \* \* reserved to" American fishermen, the cases have been more numerous, the discussions more heated, the interferences with our fishermen and their vessels, and with other vessels, more annoying and damaging, than those that have arisen under the head-land theory.

In most of these cases the provincial courts, or the privy council of the local governments, have made decisions, or statements, expounding their laws, both provincial and imperial, and insisting upon their right and jurisdiction, under the treaty, to do all that has been done by them to our fishermen, except in the affair of Fortune Bay.

What is sometimes termed the reciprocity of 1830, by which the interdiction on commercial intercourse between the North American British Provinces and the United States was relieved, and commercial intercourse was established on a liberal footing, gave to our merchant ships extensive privileges that the treaty of 1818, under the British construction, denied to our fishing vessels.

This so-called reciprocity was not established by positive law in either country; but, under the proclamation of President Jackson, authorized by law, and under the orders of the Privy Council of Great Britain, the liberties of commerce were mutually accorded to the merchant ships of each country in the ports of the other. We will hereafter refer more particularly to that arrangement.

Many of our fishing vessels being licensed, under our laws, to touch and trade in foreign ports, our Government has since claimed for them in Canadian ports the hospitality accorded to our other merchant vessels and all the liberties that they enjoy.

This reasonable claim was based upon the new conditions of our commercial intercourse with Canada as established by "the reciprocity of 1830."

It was met with the declaration that American fishermen and their vessels had only the rights, in Canadian waters and ports, that are expressly reserved to them under the treaty of 1818; and that all other rights are denied to them by that treaty; and the further insistence that the United States can confer no other rights upon them, in those waters, than such as the treaty gives them in their character as fishermen.

This question has led to serious disagreement and has been unavoidably mixed up with the question of the proper construction of the treaty of 1818.

This blending of these subjects has resulted, in part, from the enlarged privileges secured to our fishermen in the treaties of 1854 and 1871, and from the British laws and regulations, under which no express distinction is made between fishing vessels and purely commercial vessels as to entrance and clearance; port and harbor dues; pilotage and tonnage dues; the right to demand manifests and to inspect cargoes.

They employ their regulations, prescribed for commercial vessels, to prevent fishing vessels from having shelter for more than twenty-four hours in a bay or harbor; or from obtaining water or wood, or making repairs, unless they have been duly entered in the custom-house and have conformed to all the regulations that apply to merchant vessels.

The denial of every commercial privilege to our fishermen, even to the supply of wants that humanity demands, while imposing upon them every "restriction" that merchant vessels were required to endure, naturally excited the indignation of our people.

The contrast between the treatment, in these respects, of merchant vessels of all nations (including those of the United States) and our fishing vessels was painful and unjust, as it was unnecessary, and placed the men engaged in an honorable and highly useful pursuit under the ban of unjust and unfriendly discrimination, and branded them as persons against whom there was a general and recognized suspicion of bad character or of unworthy designs.

During the interval between 1818 and 1830 the treaty of 1818 furnished the only rule, equitable or legal, for the admeasurement of the rights of our fishermen.

Since 1830, except when the treaties of 1854 and 1871 were in force, the British Government, instead of relaxing the "restrictions" upon our fishermen, has increased them, and has been very alert in confining them to the strict letter of the treaty of 1818, whenever that has operated, as to their fishing and other liberties and privileges.

## II.

WHETHER IT IS OUR WISEST AND SAFEST POLICY TO RESORT TO THE LAWS OF NATIONS, ENFORCED BY ALL MEASURES THAT MAY BE NECESSARY, OR TO TREATY ARRANGEMENTS, FOR THE REGULATION, GENERALLY, OF OUR FISHING RIGHTS?

It is quite clear that, until we are free from the obligations of the treaty of 1818, they are a part of our supreme law, which no department of our own Government can violate without violating our Constitution.

As the treaty is perpetual in the renunciation of our right of common fishery, partitioned to us as an appanage of the country whose independence we established, we can not, by any means short of a successful war, re-instate the United States, by our own act, in the enjoyment of the right that was so renounced.

We can free ourselves of any embarrassment arising out of the treaty of 1818, as to our fishermen, licensed to touch and trade, by repealing it, but nobody seems to desire such a course of action, or to court the situation in which it would place both countries.

The struggle, in such an event, would be at once renewed under retaliatory laws (if this treaty is rejected); but every movement in such a policy would be very costly to the people of both countries, and, as a probable result, would eventuate in war.

So, we must live under the treaty and be constantly embroiled with the British Government as to its proper interpretation; or we must reform that interpretation by a fair and just agreement with that Government; or we must repeal or abandon it, and then rely upon retaliation to redress our wrongs.

The demand of our fishermen for an enlargement of their commercial privileges, to correspond with those of our merchant vessels, and for a more liberal hospitality in their bays, is the pith and essence of our demand for a more liberal interpretation of the treaty of 1818.

This demand has to a great degree grown out of the changed conditions, both of fishing ventures and commercial intercourse, with the British provinces since 1830.

It was not considered in 1818, but it can not be denied consideration now, in view of these changed conditions.

It is insisted by some that the treaty of 1818 gives no commercial rights to our fishing vessels; that it relates only to fishing rights and to some incidental privileges of hospitality accorded to our fishermen;

that there is no need to amend the treaty so as to secure them commercial rights; and that these should be secured, and would be, through our legislative powers of retaliation upon the commerce of the British possessions.

If we infuse into that treaty the substance of this demand, it must be done by an agreement, in the nature of an amendment, that furnishes some reciprocal concession to the people of the British possessions concerned in the fisheries; otherwise we will fail to gain their consent to it.

If we stand upon that treaty without amendment, as a fishing treaty, insisting that it has nothing to do with the commercial privileges of our fishing vessels, and that it leaves us free to demand for them the same commercial privileges that we accord to Canadian fishermen, we place this demand alone upon the ground of international comity, which is in no sense a substantial right, and is outside of all treaty agreements.

We would then have the treaty prohibition against our fishing vessels entering Canadian bays and harbors for "any other purpose whatever" than to buy wood, obtain water, make repairs, and find shelter; while their commercial privileges would entitle them to enter the ports of these bays and harbors for any lawful commercial purpose; and this would result from our act in giving them, under our laws, the double character of fishermen and merchantmen.

The British Government treats this proposition as a mere attempt to evade the treaty of 1818, and, in that view, they insist upon its rigid enforcement. They quote the restrictions of the treaty of 1818 as being obligatory upon the United States, and insist that we can not change the character of a vessel from a fisherman to a merchantman by giving to such vessel any form of license, enrollment, registry, or sea papers, in addition to such as place it in the class of a fishing vessel.

However illiberal such a contention may be, they certainly claim the right, under the treaty, and outside of it as well, to deny all entrance of our fishing vessels to their bays and harbors, except in their character as fishermen. As vessels of commerce, the British Government claims that they enter the ports by comity alone. As fishing vessels, they admit that they enter the bays and harbors by right, under the treaty, but only for the purposes to which the treaty of 1818 restricts them.

We do not intend to lay down what we may believe to be the limits of jurisdiction over adjacent seas that are said to be secured to the Gov-

ernments owning the coasts by the laws of nations. Chancellor Kent, Mr. Jefferson, Mr. Madison, and Mr. Seward, and many other great lawyers and statesmen of our country have advocated theories on this subject quite at variance with the 3-mile boundary of our right of jurisdiction seaward from the coast. This question needs to be handled with great circumspection. This is a very important matter.

A vast extent of the coast of the Pacific, reaching to the arctic circle, and destined to become a more important fishing-ground than the Atlantic coasts, must be affected by the principles of international law which the United States shall assert as defining the limits seaward from the coasts of our exclusive right to fish for seals and sea-otters, whales, and the many varieties of food-fishes that swarm along the coasts of Behring Sea and Straits. We might find, in that quarter, a very inconvenient application of the doctrine that, by the law of nations, the three-mile limit of the exclusive right of fishery is to follow and be measured from the sinuosities of the coasts of the bays, creeks, and harbors that exceed six miles in width at the entrance; and an equally inconvenient application of our claim for full commercial privileges in Canadian ports for our fishermen, when applied to British Columbian fishermen in our Pacific ports, which are nearer to them than to our fisheries in Alaska.

No allusion is made in the treaty of 1818 to the laws of nations as furnishing canons for its interpretation; and we infer that its meaning is to be gathered alone from its context and the circumstances that attended its adoption.

The undersigned believe that the interpretation of that treaty, which has led to its reformation in the treaty now before the Senate, is far in advance of anything that any American diplomat has officially demanded of the British Government, and will lead to a full and amicable adjustment of all troubles of the sort that have heretofore arisen; and that it will open the way for a liberal and neighborly agreement as to such differences as may hereafter arise, both on the Atlantic and Pacific coasts.

In this interpretation and reformation of our existing treaty, the United States make no committals as to the exclusive rights of fishing under the laws of nations that may affect our interests in the Pacific and the Gulf of Mexico in the future; nor do they place the delimitations of the fishing-grounds, or the alleged commercial rights of our fishermen, upon any principle of the international law that may be quoted against us at Victoria (within a very short distance of our northern

border), or along the extensive sea-coast between Puget Sound and Alaska, our great Pacific fishery.

The undersigned prefer the certainty which this treaty has secured as to our specific rights in the fisheries of the Atlantic coasts of North America to the uncertainty of the international law as to all those questions, which will leave in bitter dispute our rights and liberties both on the Atlantic and Pacific coasts, bays, harbors, and creeks, and in Behring's Sea and Straits.

The undersigned believe that the treaty now under consideration affords a better foundation for both our fishing and commercial rights than any that can be stated as resting alone upon international law, or upon comity secured by retaliatory laws and maintained by the fluctuating interests of commerce, that are very unstable.

Those who assert that it is not the duty, and is scarcely the right, of the President to resort to negotiations, in preference to the retaliation provided for in existing laws, in order to secure commercial rights to fishermen in Canadian ports, are not willing that their *privileges* shall be enlarged and converted into *rights* secured by treaty. They prefer the chances of greater success through legislation that will intimidate the British Government or greatly embarrass British commerce. This seems to indicate that they rely for success more upon British cupidity and the fear that Government has of the consequences of war, than upon its sense of justice, or its good faith in keeping treaty obligations.

Whether or not this may be true, it is very obvious, as the undersigned believe, that the advantages we are supposed to enjoy under such circumstances would be quite as available for the increase of our commercial privileges by retaliatory laws, after this treaty is ratified, as they are at present. Our good faith is no more pledged in this treaty than it is in the treaty of 1818.

This treaty does not bind us to advance no claim hereafter to increased commercial privileges in favor of our fishermen. The spirit in which it is framed is one of conformity, in our treaty relations, to the progressive interests and necessities of the country, so that a further increase of commercial privileges would naturally result from the policy of both countries; as is shown by the fact of the negotiation of this treaty, when such increase should appear to be, as it will be, mutually advantageous.

## III.

AN IMPORTANT PRECEDENT FOR THIS TREATY IN THE ARRANGEMENT OFFERED BY MR. SEWARD IN 1866 TO THE BRITISH GOVERNMENT.

There is a very important precedent for the plan of this treaty, and for some of its leading features, in the protocol proposed in 1866 by Mr. Seward, then Secretary of State, through Mr. Adams, our minister to Great Britain. The letter of Mr. Seward and the protocol are as follows :

*Mr. Seward to Mr. Adams.*

No. 1737.]

DEPARTMENT OF STATE,

*Washington, April 10, 1866.*

SIR: I send you a copy of a very suggestive letter from Mr. Richard D. Cutts, who, perhaps you are aware, was employed as surveyor for marking, on the part of the United States, *the fishery limits under the reciprocity treaty*. Mr. Cutts's long familiarity with that subject practically and theoretically entitles his suggestions to respect.

It is desirable to avoid any collision or misunderstanding with Great Britain on the subject growing out of the termination of the reciprocity treaty. With this view I inclose a draught of a protocol, which you may propose to Lord Clarendon for a temporary regulation of the matter. If he should agree to it, it may be signed. When signed it is desirable that the instructions referred to in the concluding paragraph should at once be dispatched by the British Government.

As the fishing season is at hand, the collisions which might be apprehended may occur when that season advances.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

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*Draught protocol communicated by Mr. Adams to the Earl of Clarendon in 1866.*

Whereas in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 26th October, 1818, it was declared that—

“The United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within certain limits heretofore mentioned;”

And whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the

of the British North American colonies, in conformity with the first article of the convention of 1818. The said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

(2) To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter; and of repairing damages therein; of purchasing wood, and of obtaining water; and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to fishermen of the United States.

(3) To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violation of rights and the transgression of the limits and restrictions which may be hereby adopted.

Provided, however, that the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws mutually acknowledged and accepted by the President of the United States, by and with the consent of the Senate, and by Her Majesty the Queen of Great Britain.

Pending a different arrangement on the subject, the United States Government engages to give all proper orders to officers in its employment; and Her Britannic Majesty's Government engages to instruct the proper colonial or other British officers to abstain from hostile acts against British and United States fishermen respectively.

This protocol was offered by Mr. Seward, as a *modus vivendi*, after the termination of the treaty of 1854 had thrown us back upon that of 1818, as to our fishery rights. He offered it, also, for acceptance by Great Britain as the basis of a new treaty of interpretation and regulation of those rights.

Mr. Seward's recommendation of a mixed commission, (1) "to agree upon and define by a series of lines" the fishing limits, in conformity with the first article of the convention of 1818; (2) "to agree upon and establish such regulations as may be necessary and proper to secure the fishermen of the United States the privilege of entering bays and harbors" under the proviso to the treaty; and (3) "to agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial," etc., "for violations of rights and transgressions of *limits and restrictions*," etc., indicates an earnest apprehension on his part *that no settlement could be reached by ordinary negotiations*; that the treaty could not be amicably kept unless it was amended; and that the amendments he proposed would cure the defects of the indefinite description of *the rights and restrictions and fishing limits* that were too generally stated in the treaty of 1818.

He saw the increasing danger of the situation, and came boldly forward to provide against its results.

The cordial manner in which these three propositions were then received by the British Government, as a basis of agreement, inspired the efforts of the present administration to renew the negotiation on this plan as the basis of a new treaty.

#### IV.

MEASURES OF HOSTILITY, EITHER COMMERCIAL OR ACTUAL, ARE NOT PREFERABLE TO THE TREATY BEFORE THE SENATE.

The undersigned have found no opinion expressed by any of our diplomatists in their official correspondence that the proper interpretation of article 1 of the treaty of 1818 could be otherwise secured than by a further agreement, as to its meaning, between the treaty powers.

If we demand a still more favorable agreement than that presented in this convention now under consideration, we shall probably encounter many more years of controversy and negotiation before a better result can be reached.

If, laying aside all treaty agreements, we attempt to coerce a better understanding and less grievous practices than we have already suffered through commercial retaliation, we shall find that the cost to our own people is far greater than the entire value of the fisheries.

If we resort to war, or to measures that may lead to hostilities, upon what precise definition of our rights and grievances will we justify such grave proceedings, either to our own people, or before the nations of the earth? We believe that no man can safely venture to formulate such a declaration.

Unless we can clearly state the causes that justify a war for the redress of grievances, or the clear definition of the right we seek to assert or defend, we have no right to subject the country to the perils, or even the apprehensions, of hostilities.

It has never been stated by any administration, or diplomatist, or by Congress that any one case, or that all the cases that have grown out of our disputes with Great Britain about the treaty of 1818, gave a just ground for retaliation, reprisals, or war.

The undersigned think it can not be safely denied that in articles 10, 12, 13, and 14 of this treaty we have gained advantages and privi-

leges of a very important character. In them is found the full concession of every claim to fishing rights we have ever made, as being within the letter or the spirit of the treaty of 1818 that is now of any practical value; and the methods provided for their administration are quite as satisfactory as any we have ever claimed under our interpretation of that treaty. For convenience of reference we insert those articles in this paper, as follows:

## ARTICLE X.

United States fishing vessels entering the bays or harbors referred to in Article I of this treaty *shall conform to harbor regulations common to them and to fishing vessels of Canada or of Newfoundland.*

*They need not report, enter, or clear when putting into such bays or harbors for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vessel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.*

They shall not be liable in any such bays or harbors for compulsory pilotage; nor, when therein for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, *shall they be liable for harbor dues, tonnage dues, buoy dues, light dues, or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of October 20, 1818.*

## ARTICLE XI.

United States fishing vessels entering the ports, bays, and harbors of the Eastern and Northeastern coasts of Canada or of the coasts of Newfoundland *under stress of weather or other casualty* may unload, reload, tranship, or sell, subject to customs laws and regulations, all fish on board, when such unloading, transshipment, *or sale is made necessary as incidental to repairs, and may replenish outfits, provisions, and supplies damaged or lost by disaster; and in case of death or sickness shall be allowed all needful facilities, including the shipping of crews.*

*Licenses to purchase in established ports of entry of the aforesaid coasts of Canada or of Newfoundland, for the homeward voyage, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States fishing vessels in such ports, promptly upon application and without charge; and such vessels having obtained licenses in the manner aforesaid shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions and supplies as are ordinarily granted to the trading vessels; but such provisions or supplies shall not be obtained by barter, nor purchased for resale or traffic.*

## ARTICLE XIII.

The Secretary of the Treasury of the United

number on each bow ; and any such vessel, required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licenses provided for in this treaty.

Such regulations shall be communicated to Her Majesty's Government previously to their taking effect.

#### ARTICLE XIV.

The penalties *for unlawfully fishing* in the waters, bays, creeks, and harbors, referred to in Article I of this treaty, may extend to forfeiture of the boat or vessel, and appurtenances, and also of the supplies and cargo aboard when the offense was committed ; and *for preparing* in such waters *to unlawfully fish therein*, penalties shall be fixed by the court, not to exceed those for unlawfully fishing ; and *for any other violation of the laws of Great Britain, Canada, or Newfoundland* relating to the right of fishery in such waters, bays, creeks, or harbors, penalties shall be fixed by the court, *not exceeding in all three dollars for every ton of the boat or vessel concerned*. The boat or vessel may be holden for such penalties and forfeitures.

The proceedings shall be summary and as inexpensive as practicable. The trial (except on appeal) shall be at the place of detention, unless the judge shall, on request of the defense, order it to be held at some other place *adjudged by him more convenient*. Security for costs shall not be required of the defense, except when bail is offered. Reasonable bail shall be accepted. There shall be proper appeals *available to the defense only* ; and the *evidence at the trial may be used on appeal*.

Judgments of forfeiture shall be reviewed by the Governor-General of Canada in council, or the governor in council of Newfoundland, *before the same are executed*.

We accord (in Article 12) to the fishing vessels of Canada and Newfoundland the same *privileges* on the Atlantic coasts of the United States that are secured to our fishing vessels by this treaty, without admitting them to fish within 3 miles of the coasts of the bays, harbors, or creeks along that sea-coast.

This treaty secures to our fishermen the free navigation of the Strait of Canso.

Article 15 secures to us the option to acquire very important commercial privileges to our fishermen whenever Congress shall conclude that they are worth the money that we may otherwise collect in duties on fish.

Congress may never make this concession ; but the power to acquire these privileges, as permanent treaty rights, may become very valuable to us when the diminishing products of the fisheries in the waters adjacent to the eastern coasts of the United States and of Canada and Newfoundland increase in value, because they will be required to supply the needs of 100,000,000 of people in the United States and 30,000,000 of people in the Dominion of Canada.

This article is suggested by a wise forecast of the future necessities of our fishermen, as well as those of the people of the United States, when our population is greatly increased, and the supply of food is to be distributed to such a vast multitude of people that the allowance, *per capita*, will be, accordingly, diminished.

The treaty now before the Senate is one of reciprocal concessions.

The unconditional concessions to the fishermen are not strictly commercial, but they give them great assistance in their business and in the means of relieving any distress which may befall them.

Can we ever hope to engraft on the treaty of 1818 any new agreement for commercial privileges to our fishermen without giving an equivalent in some liberty or privilege that Great Britain will claim for her fishermen?

This question is answered by the fact that we renounced in 1818 the best part of the fisheries that were of the fruits of the war for independence in order to make the residue a permanent right; and in 1854 and 1871 we agreed to pay heavily for a temporary suspension of the restrictions and limitations of the treaty of 1818.

We have made four fisheries treaties with Great Britain, in 1783, 1818, 1854, and 1871, and in none of them has any commercial privilege been secured to our fishermen. No serious effort has been made to secure such privileges prior to the negotiation now before the Senate. All that we have heretofore secured to our fishermen has been the privilege of inshore fishing, of curing and drying fish on certain parts of the British coasts, more or less restricted and changed in each successive treaty, and the right to buy wood, obtain water, make repairs, and find shelter.

Now, we find, according to the testimony of everybody concerned, and the thoroughly considered report of our Committee on Foreign Relations, made after a searching investigation conducted upon our coasts, and upon the testimony of experts laid before the Senate, that the inshore fisheries, for which we have paid and suffered so much, are of no value to us, and that the privilege of purchasing bait from the Canadians is an injury to our fishing interests rather than a benefit.

These declarations, which were true, show that many of the contentions and strifes we have had over this subject, for seventy years, have been about a claim of rights and privileges that are no longer of any advantage to us.

They prove that we need only such advantages, or privileges, for our

fishermen on the Canadian coasts as are enjoyed by our merchant vessels, and that these are not very important to them.

Purse-seining has revolutionized the mackerel fishery almost entirely, and has largely affected the herring fishery, and has given to our fishermen great advantages in "the catch." But Canadian capital and energy will not long permit us to do all the purse or deep-water seining.

The freezing of fish on shipboard, so as to get them fresh to our markets, is of recent date, but is a very important change in the fishing business. In this the Canadians have no greater advantages than our fishermen.

These two improvements in the fishing business, with the added power of steam, which has been applied to sea navigation since 1818, have produced the revolution in these pursuits which renders it more convenient to have commercial rights for some of our fishing vessels, but has removed the necessity to have fishing privileges within three miles of any of the coasts or in the bays of the British possessions that are not classed as great arms of the sea.

The history of the controversies that have found a final solution in the treaty now before the Senate, and the explanation of the bearing of the treaty upon those questions, are so clearly and ably stated by Hon. W. L. Putnam, in a letter dated April 16, 1888, that we append it to this report (Appendix E).

Mr. Putnam being one of our plenipotentiaries who negotiated this treaty, his review of the diplomatic and legislative history is an important exposition of the merits of this subject.

## V.

### THIS TREATY COMPARED WITH THE COMMERCIAL ARRANGEMENT STYLED "THE RECIPROCITY OF 1830."

This treaty proposes liberal reciprocity to us, confined to fishing interests, and gives us all the time we may choose to claim in which to consider our best interests and determine whether we will accept or reject the overture.

The right of choosing between this proffered commercial reciprocity and the privileges accorded to us under what is termed "the reciprocity of 1830" is a decided advantage in favor of our fishermen.

The products of our fisheries in Canadian waters are not permitted to enter Canadian ports on any ships of the United States by the Brit-

ish proclamation of November 5, 1830. That proclamation declares "that the ships of and belonging to the said United States of America may import from the United States aforesaid into the British possessions abroad *goods the produce of those States*, and may export goods from the British possessions abroad to be carried to any foreign country whatever."

This cannot apply to fishery products taken or purchased in the Canadian waters or ports, and was not intended in any manner to add to the four purposes for which our fishermen may enter Canadian ports under the treaty of 1818, as we understand that proclamation, or to repeal that treaty.

This proclamation was a month later than that made by President Jackson, and was the British response to our proclamation, under which "British vessels and their cargoes are admitted to an entry into the ports of the United States from the islands, provinces, and colonies of Great Britain, on or near the North American continent and north or east of the United States." The full text of these proclamations is hereto appended as Appendices A and B.

These proclamations set forth the entire concurrent action of the two Governments (which is called the reciprocity of 1830). There having been no change in the situation since that time, that is "the reciprocity" which still exists, as matter of law.

The broad liberality of our concession is in very striking contrast with that of Great Britain; but we have lived under this inequality of rights for more than fifty years, without a serious protest until within three years, and the complaints we have made arose from the British construction of our fishing rights and not of our commercial rights under that reciprocity.

Our fishing vessels are equally barred (under the British contention) by the treaty of 1818, and by the British proclamation of November 5, 1830, from entering their ports with cargoes of fish taken in Canadian waters, without reference to the rights to touch and trade or to any other commercial character, that we may give them under our laws. To gain these rights for our fishermen, we have a choice of grave alternatives.

But the cost of the naval and military preparation that would be necessary to give confidence to our own people, in supporting any extreme demand or stringent measures connected with this subject, would be greater than the whole value of these fisheries for the next half century.

## VI.

THE PRESIDENT HAS ONLY PERFORMED A PLAIN DUTY, IN THE INTERESTS OF ALL THE PEOPLE OF THE UNITED STATES, AND TO THE SENATE IS LEFT THE RESPONSIBILITY.

The undersigned do not find it necessary to answer in detail the various objections urged in committee by the Senators opposed to the ratification of this treaty, because no amendment was offered to indicate that the treaty could be so improved as to gain the support of any member of the majority of the committee.

The undersigned understand that the dissent from this negotiation is directed to it as an entirety. This dissent is based, in part, upon the opinion of some members of the majority that the President should not have entered upon any negotiation, in view of the resolution adopted by the Senate on the 3d day of February, 1886, and the opinion of Congress as it was expressed in the non-intercourse act approved March 3, 1887. That resolution is as follows:

*Resolved*, That in the opinion of the Senate the appointment of a commission, in which the Governments of the United States and Great Britain shall be represented, charged with the consideration and settlement of the fishing rights of the two Governments on the coasts of the United States and British North America, ought not to be provided for by Congress.

This resolution related, as we understand it, solely to the question whether such negotiation should be conducted by commissioners, under an act of Congress, or by the President, under his constitutional power to make treaties.

The Senate adhered to its constitutional power to ratify or reject a treaty, and insisted that the President should make any negotiation he might see fit to conduct in such form and under such conditions that the power of the Senate over such subjects should not be interfered with.

The retaliatory act of Congress above mentioned was not intended, and could not have been intended, to instruct the President as to the will of the legislature in a matter over which Congress has no authority—the negotiation, ratification, or promulgation of a treaty.

Congress has the right to declare that in some or all of the hundreds of cases that have occurred in which the treaty of 1818 has been in question, it has been violated, and that retaliation, reprisals, or war shall follow such abuses until they are compensated, and they shall cease. Such a declaration as to the violation of the treaty was dis-

tinctly made in the report of the Senate Committee on Foreign Relations, on the 19th of January, 1837. We quote from that report, as follows :

It will be seen, from the correspondence and papers submitted by the President, in his message on the subject, of the 8th of December last (Ex. Doc. No. 19, Forty-ninth Congress, second session), and from the testimony taken by the committee, that some of these instances of seizure or detention, or of driving vessels away by threats, etc., were in clear violation of the treaty of 1818, and that others were on such slender and technical grounds, either as applied to fishing rights or commercial rights, as to make it impossible to believe that they were made with the large and just object of protecting substantial rights against real and substantial invasion, but must have been made either under the stimulus of the cupidity of the seizing officer, sharpened and made safe by the extraordinary legislation to which the committee has referred, whereby the seizing officer, no matter how unjust or illegal his procedure may have been, is made practically secure from the necessity of making substantial redress to the party wronged, or of punishment, or else they must have arisen from a systematic disposition on the part of the Dominion authorities to vex and harass American fishing and other vessels so as to produce such a state of embarrassment and inconvenience with respect to intercourse with the provinces as to coerce the United States into arrangements of general reciprocity with the Dominion.

But Congress did not follow up this bold declaration of that committee with a demand for redress, or with any provision of law that was based upon the fact that the treaty of 1818 had been violated by Great Britain. It was our commercial rights that Congress undertook to protect.

The committee did not ask the Senate to pass a bill that would commit the country, if it should become a law, to a state of actual hostility towards Great Britain, or even to a firm declaration that Great Britain had violated the treaty of 1818 in the manner and with the motives stated in the foregoing extract from their report.

Congress was either satisfied that no occasion had arisen which would justify decisive measures, such as retaliation, reprisals, or war, in resentment for any actual violation of the treaty, or else it sought to evade its just responsibility to the country by increasing the powers of the President to retaliate on British commerce, and by throwing upon him the responsibility of deciding whether the "recent" conduct of that Government and of the provinces demanded of the United States that any retaliation should be proclaimed and enforced.

The House of Representatives demanded broader powers for the President than the Senate would agree to, but both houses hastened to devolve upon him the decision of the whole question of our treaty re-

lations with Great Britain, and gave him the discretion to employ all necessary means to put his decision in force.

This is the law that Congress enacted to meet that aggravated state of affairs, as described in the report of the Senate committee :

AN ACT to authorize the President of the United States to protect and defend the rights of American fishing-vessels, American fishermen, American trading and other vessels, in certain cases, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of, or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also, to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this act. Every violation of any such proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports,

or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

Approved, March 3, 1887.

This law relates to past offenses as well as to those that may hereafter occur. As to past offenses, Congress abdicated its authority to declare that they constituted just grounds for retaliation, and left that matter solely to the discretion of the President or else Congress intended that the President should have these powers to meet a case of emergency, and should also employ his constitutional power of making treaties (which Congress could not control) as a part of "his discretion" in providing a way through which the evils complained of should be remedied.

The undersigned can not impute to Congress that its purpose, in devolving upon the President these broad discretionary powers and conditional duties, was to forbid, or to embarrass, the free exercise by him of his constitutional power to make treaties, with the advice and consent of the Senate, or that these extraordinary powers were given him to enable Congress to escape its just responsibility for measures that were necessary for the protection of the honor of the country or the interests of the people.

If the President had resorted to retaliatory measures against Canadian commerce, under this act of March 3, 1887, without having attempted any negotiation with Great Britain, the open way that was indicated by Mr. Seward's protocol in 1865, to which we have referred, and the favorable impression it made on the British Government, would have been pointed out by an indignant people as an abandoned opportunity for an amicable agreement with Great Britain, and he would have been amenable to just censure.

But, aside from this, his duty to humanity, as well as to his country, forbade him from exposing the interests and prosperity of 65,000,000 of people to danger, by hasty or extreme measures of retaliation, while it was possible to reach a just settlement of our disputes with Great Britain over matters that concern only a few thousand people, who

would be more benefited by such an agreement than they could be by retaliatory laws.

The President has succeeded in making provision for a settlement of these long-standing disputes on terms that are just and reasonable, as we are satisfied—a much better settlement than has been even attempted heretofore, and one that will increase, in the future, the liberality of commerce with Canada.

If the Senate shall decide to ratify this treaty there will remain no doubt that it assumes all the responsibility for what may hereafter result from the proper employment by the President of the retaliatory powers that Congress has conferred upon him.

If the proper use of those powers is considered by Great Britain as a violation of the treaty of 1818, in demanding for our fishermen greater liberties and privileges than that treaty secured to them, and that we are enforcing that demand through commercial duress, the Senate will also take whatever responsibility may belong to that situation.

Congress declined to say in the act of March 3, 1887, that the rights of American fishermen had been denied or abridged, but left it to the President to determine that question. If this treaty is rejected, it is beyond dispute that retaliation is the only means, short of war, by which we can redress our wrongs, if we have suffered any. The Senate, in rejecting this treaty, will affirm that such wrongs exist, which Congress did not so assert, and, because thereof, will force the President to proclaim non-intercourse.

## VII.

THE PROTOCOL TO THE TREATY IS AN HONORABLE AND FRIENDLY OVERTURE OF THE BRITISH GOVERNMENT, AND SHOULD BE ALLOWED TO DEVELOP, BY ACTUAL EXPERIENCE, WHETHER THIS TREATY WILL BE BENEFICIAL TO OUR FISHERIES AND COMMERCE.

In view of a possible disagreement between the Senate and President as to the value of this treaty to our fishermen, the undersigned respectfully call the attention of the Senate to the importance of postponing its consideration until the next December session of Congress.

The protocol to the treaty, suggested and offered by the British plenipotentiaries, tenders to our fishermen very liberal commercial privileges in Canadian ports for two years.

This overture is equivalent, almost, to a guaranty that during this period the British Government, in conjunction with the provincial gov-

ernments, will prevent the recurrence of the interferences with our fishermen that have given them such serious disquietude. It will also put into practice, substantially, all the provisions of the present treaty, except those relating to the delimitation of fishing boundaries.

A single fishing season, under such conditions, will demonstrate that this treaty is a failure, or else that it is of great value to the country.

The advantage of such experience is manifest, and we should not rashly trust to our opinions, which must be largely conjectural, when we can fortify them or disprove their soundness by a short delay in our action, which does not commit us, in the least degree, either for or against the treaty.

The British Government has exerted a restraining influence during the whole period since 1818 over the provincial governments as to their demands and proceedings under that treaty. That Government has encouraged liberality in the conduct of the fishermen and in commercial interchange between the United States and the provinces; seeing that the prosperity of those countries greatly depended on such a policy.

It has not been an easy task to restrain the people of the provinces to a course of moderation. Political reasons, not always favorable to the Crown, and the jealousies of rival interests in fishing rights held in common by the people of two countries, and even the lingering hatreds engendered by our Revolutionary war, have been active in promoting discord in these colonies. Great Britain never before had so capital an interest in fostering the loyalty of the Canadians. The Suez Canal is scarcely more important to the interests of that Empire than the Canadian Pacific Railway.

But other interests of the most important character inspire the British Government with an earnest purpose to cultivate the closest friendship with the people of Canada.

It is evidently the true policy of the British Government to satisfy the people of these provinces that the treaty now before the Senate will be of advantage to them, because of the

proposition, not requiring our formal acceptance to make it available, on the ground that we could not, without dishonor, permit such a course, resulting in such possible advantages to us, even for one fishing season, and then reject the treaty.

We have not in any way invited or suggested this offer of the British Government, and we are not asked to accept it. It proposes, for a time, to liberalize the commercial privileges of our fishermen in the provincial ports, for reasons satisfactory to the British Government.

If we should hasten our action on this treaty with the purpose of preventing an effort of that Government to satisfy Her Majesty's subjects that a liberal policy towards us is the best, or even of convincing our people by experience that such a policy is also best for us, we would incur greater discredit by such action than could possibly attend our rejection of the treaty, after a fair trial of the British expedient presented in this protocol had satisfied our people that the treaty should not be ratified.

### VIII.

THE HEADLAND THEORY, AS APPLICABLE TO THE BAYS, HARBORS, AND CREEKS THAT ARE CLAIMED AS TERRITORIAL WATERS, HAS NOT BEEN ABANDONED BY THE BRITISH GOVERNMENT, EXCEPT IN THIS TREATY. IT WAS A VITAL QUESTION WHEN THIS NEGOTIATION WAS ENTERED UPON.

It is insisted by some that Great Britain had abandoned the headland theory, and that it was obsolete when this treaty was made.

The undersigned do not understand that the British headland theory, as applied to the bays, harbors, and creeks that had geographical names and limits, and were included by British or provincial laws within the local jurisdictions in 1818, has been abandoned by Great Britain. Outside of a limit of 3 miles from the headlands of such indentations of the sea-coast it was abandoned as early as 1815, in the case of the American fishing vessels that were warned off the coast by the British man-of-war *Josseur*.

Our claims could not be fairly predicated, diplomatically, on such an admission by Great Britain as to the base-line from which the 3-mile limit is to be measured.

That being still an open question, the claims of either side were a necessary feature in the negotiation of this treaty.

If our contention was *indisputably just*, a peremptory demand for its allowance was the only course we could adopt. Such a demand, we

believe, has never been formally made by this Government. Congress certainly has never affirmed the indisputable justice of our claim. The United States have preferred to let this question, with all the others that have arisen under the treaty of 1818, continue in reach of discussion and negotiation.

In that situation the present administration found this controversy.

Mr. Bayard proposed to the British Government that the 3-mile fishing limit should be measured, in the bays that were 10 miles or less in width, from that point nearest the entrance where the shores are 10 miles distant from each other. He found his support for that offer in the arrangement between Great Britain and other European nations for fishing in the bays and harbors of their respective coasts along the North Atlantic and the northern seas.

It being generally conceded that the limit of local jurisdiction extended 3 miles from the coast out into the sea, and that this distance was adopted because it measured the range of artillery in ancient times, it is obvious that when the range of artillery is extended to 5 miles it is due to the security of bays and harbors reaching far inland that treaty arrangements fixing a new measurement should have some reference to the increased limits for the protection of the people residing along such shores corresponding with the improved range of artillery.

This offer made no allusion to any headland theory that the British Government had ever asserted; still it was directly opposed to assertions of that theory which Great Britain had often made, and called forth the following

country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile limit would be drawn from points in the heart of Canadian territory, and almost 70 miles from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute, 14 and 15 Vict., cap. 63; and *Mouatt v. McPhee*, 5 Sup. Court of Canada Reports, p. 66.)

From this statement of the British contention, it appears that the headland theory was still adhered to by that Government in March, 1887, but it was admitted that it had been relaxed as to the Bay of Fundy for special reasons.

Mr. Bayard's reply to the "observations" of the Marquis of Salisbury, which is set forth on pages 56 to 60, inclusive, of Senate Executive Document No. 113, first session of Fiftieth Congress, refutes the force of those "observations" by citing precedents furnished by the conduct of the British Government in this matter, and the decision of the umpire in the cases of the *Washington* and the *Argus*, in which he wholly discarded the headland theory and made an award in favor of the owner.

But these counter-statements only served to show that the headland theory, in its application to bays within the jurisdictional limits, was still in controversy between the two Governments, and that there was little disposition on the part of the British Government to yield, as there was on our part to admit, the justice of that construction of the treaty of 1818.

These contentions made it necessary that a better understanding should be reached; and if the two Governments could not accomplish this by negotiation, it was certain that increasing strife and broils between their people would

of Newfoundland and Canada and of the United States can ever peacefully enjoy, *in common*, the valuable rights of fishery.

Reciprocity, in some form, is an element in every treaty made for the settlement of questions that are sincerely in dispute between independent powers. In all of our treaties with Great Britain, relating to the extra-territorial rights, liberties, or privileges of each in the other's country or jurisdiction, reciprocity has been conspicuously stated as a leading motive and purpose. The provisional treaty of peace of November 30, 1782, sets out with this declaration:

Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between States, it is agreed to form the articles of the proposed treaty on such principles of liberal equity and reciprocity as that, partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two countries may be established as to promise and secure to both perpetual peace and harmony.

This declaration was repeated, in substance, in the definitive treaty of peace of September 3, 1783.

In both these treaties the right of fishery was defined as between the people of both countries, the United States expressly yielding some of the liberties they had enjoyed in common with the colonies that remained subject to

tlement of causes of difference between the two countries," and arbitration and reciprocity pervaded every one of its forty-three articles.

In all the wide range of our treaty engagements with the treaty powers of the world there is scarcely one that does not contain some mutual advantage or reciprocal concession, and they cover every subject that has been suggested, in the experience of mankind, as being fit or convenient to be settled by international agreement rather than to be left under the control or security that might be afforded by the laws enacted by the respective countries, which they could alter or repeal at pleasure.

Now we are again remitted to the field of "misunderstanding," "in regard to the extent of the right of fishing on the coasts of British North America," with an increased number of cases of seizures and interferences with our fishermen growing out of those disputes, and the question is, whether we shall abandon all efforts to remove these misunderstandings by further agreements, or shall we treat every claim we make as a *sine qua non*, and its refusal an ultimatum, and resort, as the first expedient, to retaliatory legislation to enforce it. That failing, shall we stop and abandon the claim, or prepare for its support by coercive measures?

coast, from which we make the following extracts, found in Senate Ex. Doc. 22, second session Thirty-second Congress

An account of the fishing-grounds has been reserved for the conclusion. Of those near our cities, and visited for the purpose of supplying our markets with fish to be consumed fresh, it is unnecessary to speak. Those within the limits of British America, and secured to us by treaty, as well as those on the eastern coasts of Maine, are less generally known and may properly claim attention. Of the distant, Newfoundland is the oldest. That vessels from Boston fished there as early as the year 1645 is a fact preserved in the journal of Governor Winthrop. The "great bank," which has been so long resorted to, is said to be about 200 miles broad and nearly 600 miles long. In gales the sea is very high, and dense fogs are prevalent. The water is from 25 to 95 fathoms deep. The edges of the bank are abrupt and composed of rough rocks. The best fishing-grounds are between the latitudes of  $42^{\circ}$  and  $46^{\circ}$  north. The "bankers," as the vessels employed there are called, anchor in the open sea, at a great distance from the land, and pursue their hazardous and lonely employment, exposed to perils hardly known elsewhere. The fish are caught with hooks and lines, and (the operations of splitting and dressing performed) are salted in bulk in the hold, from day to day, until the cargo is completed. The bank fish

seriously questioned, in a letter to Mr. Seward, Secretary of State, dated April 24, 1868, thus describes the value of the fisheries as sources of food supply. He says :

But there are other most important considerations connected with extended coasts and great fisheries. The fisheries are capable of furnishing more and cheaper food than the land.

The reasons are —

(1) The ocean surface is nearly four times that of the land, the area being 145,000,000 square miles of ocean surface to 52,000,000 of land.

(2) The ocean everywhere produces fish, from the equator to the pole, the profusion of submarine animals increasing as you go north up to a point but 433 miles from the pole and believed to extend there, whereas, in consequence of mountains, deserts, and the temperature of the surface of the earth in very high latitudes, less than half its surface can be cultivated

Nothing could more certainly lessen the food supply of the people, which, after all, is the basis of all human progress, than to promote strife amongst fishermen visiting the same waters. A policy that leads to such a result is an injustice to the human family.

No wealth, national or personal, can be justly earned when it comes from diminishing the supply of human food.

With all our vast excess of cereals and of animal food we still need all the fish we can gather from the oceans and seas for the comfort and economy of living, especially among the industrial classes of our rapidly increasing population. The Atlantic and Pacific fisheries rank in importance along with the production of beef, mutton, and pork as a source of food supply, and as a competitive element in the food markets even of this abundant country.

Our fishing rights and liberties along the coasts of Labrador and Newfoundland, as fixed by the treaty of 1818, are rights to be enjoyed in common with the British people, and are such as no other nation has. They are partnership rights, in the intimate

## XI.

## THE USE OF FLEETS TO INTERPRET A TREATY.

Under the misunderstandings of the past we have on both sides sent fleets to these waters to protect our fishermen against each other and against the unfriendly conduct of the local governments; fleets to enforce agreements that the governments concerned could not expound by a mutual understanding.

If these questions are left open, and commercial war is inaugurated through measures of retaliation, how many ships and guns is it supposed will be needed to keep the peace between our fishermen on the coasts of Labrador and Newfoundland?

The danger in this direction does not come from the desire of either Government to promote a war, but from their inability to prevent its initiation through the personal hostilities of men associated in the use of common rights and privileges, and stimulated by rivalries which are encouraged by laws of retaliation enacted by their respective Governments.

These are some of the

The total area as to which we renounced the common right of fishing, according to this construction of that treaty, is 16,424 nautical square miles.

The additional area of renunciation under the delimitations of the proposed treaty, now before the Senate, is 1,127 square miles, being  $6\frac{8}{10}$  per cent. addition to the former area of exclusion.

The total area of bays, creeks, and harbors not more than 6 miles wide at their mouths is about 6,599 square miles, and is included in the above-mentioned measurement of 16,424 square miles.

The British claim as the true construction of the agreement in the treaty of 1818, that it fixed the line within which we renounced the common right of fishery at the distance, measured seaward, of 3 miles from the entrance of *all* bays, harbors, and creeks of His Majesty's dominions. This would add an area of 3,489 square miles to the exclusive fishing grounds claimed by the British Government, while the area in which we have renounced the common right of fishing in those bays, harbors, and creeks under the

## XIII.

THE VIEWS OF THE PRESIDENT OF THE UNITED STATES AS TO THE PROPER EXECUTION OF THE ACT OF CONGRESS OF MARCH 3, 1887, OPPOSED TO THOSE OF THE CAPITALISTS WHO CONTROL OUR FISHING INDUSTRY AND REAP THE GREATEST ADVANTAGES FROM THEM.

The president of the American Fishery Union, in 1887, brought the subject of retaliation to the attention of the President of the United States, and insisted that it should be applied only to the exclusion of British-American fishing products from the markets of the United States. To that demand the President of the United States replied as follows:

EXECUTIVE MANSION,

*Washington, D. C., April 7, 1887.*

GENTLEMEN: I have received your letter lately addressed to me, and have given full consideration to

I understand the main purpose of your letter is to suggest that, in case recourse to the retaliatory measures authorized by this act should be invited by unjust treatment of our fishermen in the future, the object of such retaliation might be fully accomplished by "prohibiting Canadian-caught fish from entry into the ports of the United States."

The existing controversy is one in which two nations are the parties concerned. The retaliation contemplated by the act of Congress is to be enforced, not to protect solely any particular interest, however meritorious or valuable, but to maintain the national honor, and thus protect all our people. In this view the violation of American fishery rights and unjust or unfriendly acts towards a portion of our citizens engaged in this business is but the occasion for action, and constitutes a national affront which gives birth to or may justify retaliation. This measure once resorted to, its effectiveness and value may well depend upon the thoroughness and extent of its application; and in the performance of international duties, the enforcement of international rights, and the protection of our citizens, this Government and the people of the United States must act as a unit, all intent upon attaining the best result of retaliation upon the basis of a maintenance of national honor and duty.

subject in the same sense that Congress has treated it, as a question of national concern, and not as a means of promoting the pecuniary interests of those who control and derive the chief benefit of our fisheries, such as the owners and outfitters of fishing fleets, and warehousemen and those engaged in salting, drying, and canning fish for the interior markets.

The hardy fishermen of the United States will, we believe, also be protected in the administration of our retaliatory laws, and other similar statutes, against the common practice that speculators in the fishing industry now resort to of placing their vessels in charge of captains and crews imported from Canada, because they can underbid our fishermen in the matter of wages.

This practice is a far more serious injury to our fishermen and to the people of the United States than would come from yielding twice the area of fishing waters that are yielded by the delimitations of this treaty, even if they were good fishing waters. It has already compelled many of our best fishermen to withdraw from this, and to seek a living in other pursuits.

#### XIV

of nations as a good equivalent, moving from each to the other, for the concessions mutually made. This doctrine is also applied by the courts as between individuals to support agreements based on the consideration of yielding or settling disputed claims.

In contrast with the assertion of the utter want of reason in the claims of Great Britain, based on the headland theory, we find many strong declarations of our Government. Mr. Monroe, Secretary of State, on December 30, 1816, admitted that a discussion of *rights* should be avoided when mutual *concessions were necessary to bring the treaty powers to a mutual agreement*. He said to Mr. Bagot:

In providing for the accommodation of the citizens of the United States engaged in the fisheries on the coasts of His Britannic Majesty's colonies on conditions advantageous to both parties, I concur in the sentiment that it is desirable to avoid a discussion of *their respective rights*, and to proceed, in a spirit of conciliation, to examine *what arrangement will be adequate to the object*. The discussion which has already taken

our plenipotentiaries offered to Great Britain the surrender of our rights to the extent they were renounced in the treaty of 1818.

Our plenipotentiaries, in explaining the treaty to our Government, say:

It will also be perceived that we insisted on the clause by which the United States renounce their right to the fisheries relinquished by the convention, that clause being omitted in the first British counter-project.

We insisted on it with the view: (1) Of preventing any implication that the fisheries secured to us were a new grant and of placing the permanence of the rights secured and of those renounced precisely on the same footing; (2) of its being expressly stated *that our renunciation extended only to the distance of three miles from the coasts.*

The reasons they assigned for

structed by the British Government that the permission to fish that had been conceded to us in the Bay of Fundy did not extend "to the Bay of Chaleur and other large bays of similar character on the coast of Nova Scotia and New Brunswick," and that they "*still adhere to the strict letter of the treaties,*" of which Mr. Webster afterwards spoke in his circular letter in 1852.

Many other disputations have occurred over the meaning of this treaty, as to the extent of the renunciation of our fishing rights within 3 miles of the coasts, bays, harbors, and creeks of the British North American possessions, and we are not aware that any of them have been definitively settled. Mr. Everett, minister to Great Britain, on the 25th March, 1845, replied to the letter of Lord Aberdeen, stating the action of the British Government in relation to our right to fish in the Bay of Fundy, in which Lord Aberdeen said:

The undersigned will confine himself to stating that, after the most deliberate reconsideration of the subject, and with every desire to do

Will Mr. Everett also be censured for finding difficulties in the head-land theory of the British Government (so clearly stated by Lord Aberdeen) that staggered Mr. Webster's honest mind in 1852?

A still more conspicuous and deliberate presentation of the difficulty of arriving at a satisfactory construction of the first article of the treaty of 1818, and of the propriety and necessity of an agreement with Great Britain, as to its true meaning, is found in the letter of Mr. Evarts, Secretary of State, to Mr. Welsh, our minister to England, of September 27, 1878. Mr. Evarts says:

If the benevolent method of arbitration between nations is to commend itself as a discreet and practical disposition of international disputes, it must be by a due maintenance of the safety and integrity of the transaction, in the essential point of the award, observing the limits of the submission.

As to the representations made by the Secretary of State to the British minister in Washington in the cases of the *Joseph Story* and *David J. Adams*, in notes dated respectively the 10th and 20th of May, 1886, the Earl of Roseberry communicated to Sir Lionel West a report of the Canadian minister of marine and fisheries, copy of which was communicated to Mr. Bayard by Mr. Harding, British *chargé d'affaires*, on August 2, 1886. From this report the following in reply to Mr. Bayard's argument for commercial privileges is here quoted :

In addition to this evidence, it must be remembered that the United States Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen. The British case claimed compensation for the privilege which had been given since the ratification of the latter treaty to United States fishing vessels "to transfer cargoes, to outfit vessels,

incidental and reciprocal advantages of the treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the treaty of Washington confers no such rights on the inhabitants of the United States, *who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enforcement of former oppressive statutes.*"

If the proclamation of 1830 and the order in council of that year extended to the fishing vessels engaged in the fisheries adjacent to the British Provinces on the North Atlantic and repealed the treaty of 1818, in its restrictive parts, the position taken by the United States before the Halifax Commission was a serious error.

## XV.

A PRECEDENT WAS ESTABLISHED BY PRESIDENT JACKSON IN 1834 AS TO THE WISDOM OF FORBEARANCE IN COMMERC

for a flagrant wrong, President Jackson thus advised Congress, in his sixth annual message (1834), as to the policy of such action :

Our institutions are essentially pacific. Peace and friendly intercourse with all nations are as much the desire of our Government as they are the interest of our people. But these objects are not to be permanently secured by surrendering the rights of our citizens, or permitting solemn treaties for their indemnity in cases of flagrant wrong to be abrogated or set aside.

It is undoubtedly in the power of Congress seriously to affect the agricultural and manufacturing interests of France by the passage of laws relating to her trade with the United States. Her products, manufactures, and tonnage may be subjected to heavy duties in our ports, or all commercial intercourse with her may be suspended. But there are powerful and, to my mind, conclusive objections to this mode of proceeding. We can not embarrass or cut off the trade of France without at the same time, in some degree, embarrassing or cutting off our own trade.

In a published letter of the chief counsel of the "outfitters" and owners of fishing vessels—Mr. Woodbury—he says, that "the right to fish on the coast of Nova Scotia, within the 3-mile limit, our fishermen consider of no value whatever."

The report of the Senate Committee on Foreign Relations of January 19, 1887, on the value of inshore fishing rights, and the right to take or buy bait, to which reference has been made, shows conclusively that they are of no value to our fishermen. In their report, the committee say:

From the investigations made by the committee during the last summer and fall, and as the result of the great mass of testimony taken by it and herewith returned, the committee believe it to be clear, beyond all dispute, that the right to fish within 3 miles of the Dominion shores *is of no practical advantage whatever to American fishermen.* The cod and hal

There will be found accompanying this report (see Appendix) statements showing the total catch of mackerel during certain years and the parts of the seas where they have been taken; and it will also be seen from the evidence *that in general the mackerel fisheries by Americans in the Gulf of St. Lawrence and in the Bay of Chaleur have not been remunerative.*

In view of all these facts, well known to the great body of the citizens of the United States engaged in fisheries and embracing every variety of interest connected therewith, from the wholesale dealer, vessel owner, and outfitter, to that portion of the crew who receive the smallest share of the venture, it must be considered as conclusively established that there would *be no material value whatever in the grant by the British Government to American fishermen of absolutely free fishing; and in this conclusion it will be seen, by a reference to the testimony, that all these interests fully concur.*

When we consider that the in

And, for the first time that such a thing was ever attempted, this treaty proposes to open the door to wide commercial privileges for our fishermen, based on concessions that concern them alone.

The *modus vivendi* provided in the protocol enables our fishermen, during two fishing seasons, to compare the value of the very broad commercial privileges therein accorded with the price of annual license at \$1.50 per ton on their ships. A fisherman, outfitting with all he needs to sustain his business in Canadian ports, and having the privilege of sending his fares to our market under bond, over railroads and through such ports as would be easily reached, would be able to make so many more voyages that the annual license of \$1.50 a ton on his ship would be reduced to 30 cents or 40 cents per ton on the voyage. If the business will not bear such a tax in compensation for such privileges, it is scarcely worth a war, or a serious disturbance of good will with our neighbors, to secure these commercial advantages to our fishermen.

by the Secretary of State and thirty-two have been appointed by the President with the advice and consent of the Senate.

It will be seen that an interval of fifty-three years, between 1827 and 1880, occurred during which the President did not ask the consent of the Senate to any such appointment.

The following important appointments and many others were made when the Senate was in session:

*March 2, 1793.*—David Humphries. By Washington. Commissioned plenipotentiary to treat with Algiers. Congress adjourned on that day.

*January 26, 1832.*—Edmund Roberts. By Jackson. Commissioner to treat with Co

Persons appointed by the President and confirmed by the Senate—Continued.

1814. Albert Gallatin, to treat with Great Britain.

1823. R. C. Anderson and John Sargeant, to treat with the American nations.

1827. Joel R. Poinsett, *vice* Anderson, above.

1880. James B. Angell, John T. Swift, and W. H. Prescott, to treat with China.

Total number, 32.

Persons appointed by the

## APPENDIX A.

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

### A PROCLAMATION.

Whereas by an act of Congress of the United States, passed on the 29th day of May, 1830, it is provided that whenever the President of the United States shall receive satisfactory evidence that the Government of Great Britain will open the ports of its colonial possessions in the West Indies, on the continent of South America, the Bahama Islands, the Caicos, and the Bermuda or Somer Islands, to the vessels of the United States, for an indefinite or for a limited term; that the vessels of the United States, and their cargoes, on entering the colonial ports aforesaid, shall not be subject to other or higher duties of tonnage or impost, or charges of any other description, than would be imposed on British vessels or their cargoes, arriving in the said colonial possessions from the United States; that the vessels of the United States may import into the said colonial possessions from

Government of Great Britain will open for an indefinite period the ports in its colonial possessions in the West Indies, on the continent of South America, the Bahama Islands, the Caicos, and the Bermuda or Somer Islands, to the vessels of the United States, and their cargoes, upon the terms and according to the requisitions of the aforesaid act of Congress :

Now, therefore, I, Andrew Jackson, President of the United States of America, do hereby declare and proclaim that such evidence has been received by me ; and that, by the operation of the act of Congress passed on the 29th day of May, 1830, the ports of the United States are, from the date of this proclamation, open to British vessels coming from the said British possessions, and their cargoes, upon the terms set forth in the said act, the act entitled "An act concerning navigation," passed on the 18th day of April,

## APPENDIX B.

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### ORDER IN COUNCIL.

AT THE COURT AT ST. JAMES',  
November 5, 1830.

Present: The King's Most Excellent Majesty in Council.

Whereas, By a certain act of Parliament, passed in the 6th year of the reign of his late Majesty King George the Fourth, entitled "An act to regulate the trade of the British possessions abroad," after reciting that "by the law of navigation foreign ships are permitted to import into any of the British possessions abroad, from the countries to which they belong, goods the produce of those countries, and to export goods from such possessions to be carried to any foreign country whatever, and that it is expedient that such permission should be subject to certain conditions, it is therefore enacted that the privileges thereby

vessels navigating between the said States and His Majesty's possessions in the West Indies and America, have been repealed, and that the discriminating duties of tonnage and of customs heretofore imposed by the laws of the said United States upon British vessels and their cargoes, entering the ports of the said States from His Majesty's said possessions, have also been repealed; and that the ports of the United States are now open to British vessels and their cargoes, coming from His Majesty's possessions aforesaid;

His Majesty doth, therefore, with the advice of his privy council, and in pursuance and exercise of the powers so vested in him, as aforesaid, by the said act so passed in the sixth year of the reign of his said late Majesty, or by any other act or acts of Parliament, declare that the said recited orders in council of the 21st day of July, 1823,

## APPENDIX C.

*Being a statement of the persons employed by the United States, in conducting negotiations, since 1780.*

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
G. Morris.....	Oct. 13, 1789	President.....	Private agent.....	To ascertain intentions of Great Britain: as to treaty of 1783, and making a treaty of commerce.	None.

Richard O'Brien William Eaton James L. Cathcart Rufus King	Dec. 18, 1798 Feb. 7, 1799	President President and Senate	Minister plenipotentiary	To conclude a treaty with Tunis modifying the treaty of 1797. To negotiate a treaty of amity and commerce with Russia.	{ Consul-general at Algiers. Consul at Tunis. Consul at Tripoli. Minister plenipotentiary to Great Britain. { Chief Justice of the Supreme Court of the United States. (None
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## APPENDIX C.—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
J. Q. Adams..... J. A. Bayard..... Henry Clay..... Jonathan Russell..... Albert Gallatin.....	Jan. 18, 1814 Feb. 9, 1814	President and Senato .....do.....	Minister plenipotentiary and extraordinary (jointly		

Richard C. Anderson.....	May 22, 1823	.....do.....	To conclude a treaty of commerce with Colombia.	Minister plenipotentiary to Colombia.
Richard Rust.....	June 27, 1823	.....do.....	To conclude with Great Britain a treaty relative to commerce, the suppression of the slave trade, and the principles of maritime law and neutrality.	Envoy extraordinary and minister plenipotentiary to Great Britain.
Henry Middleton.....	July 29, 1823	.....do.....	To conclude a treaty with Russia relative to the respective rights and claims of the two countries in respect to navigation, fishery, and commerce on the northwest coast of America; the abolition of	

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
John James Appleton .....	Jan. 23, 1827	President .....	.....	To conclude a treaty of commerce and navigation with Sweden.	Chargé d'affaires in Sweden.
Joel R. Poinsett .....	Feb. 12, 1827	President and Senate .....	Envoy extraordinary		

Charles Rhind .....	Sept. 12, 1829	.....do.....	Commissioners .....	To conclude a treaty of friendship and commerce with Turkey.	None. Consul at Smyrna.
David Olley .....	Oct. 1, 1829	.....do.....	.....	To conclude a treaty of commerce and a claims convention with Spain.	Commodore, U. S. Navy. Envoy extraordinary and minister plenipotentiary to Spain.
C. P. Van Ness .....</					

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
Robert B. McAfee .....	Mar. 30, 1833	President.....	.....	To conclude a treaty of amity, commerce, and navigation with New Granada.	Chargé d'affaires in New Granada.
Edward Livingston .....	June 4, 1833	.....do .....	.....		

George M. Dallas	Mar. 20, 1837	do	To conclude a treaty of commerce and navigation with Russia.	Envoy extraordinary and minister plenipotentiary to Russia.
Henry Wheaton	Mar. 28, 1837	do	To conclude a treaty of commerce and navigation with Prussia.	Envoy extraordinary and minister plenipotentiary to Prussia.
Do	June 7, 1837	do	To conclude a treaty for the removal or modification of restrictions on trade with any state or states of Germany except Austria.	Do.

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
Powhatan Ellis	Feb. 20, 1840	President.	.....	To conclude an additional article to the claims convention of April 11, 1839, with Mexico, extending the time for its ratification.	Envoy extraordinary and minister plenipotentiary to Mexico.
Allen A					

Henry Wheaton .....	Nov. 18, 1843	.....do.....	(1) To conclude treaties of commerce and navigation with Mecklenburg-Schwerin and Oldenburg.	Envoy extraordinary and minister plenipotentiary to Prussia.
Do .....	Dec. 7, 1843	.....do.....	(2) To conclude treaties relative to emigration, succession to property, consuls, etc., with Saxony, Bavaria, Wurtemberg, Hesse, and Baden.	

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
John Slidell.....	Nov. 10, 1845	President.....	.....	To conclude a treaty of commerce and boundaries with Mexico.	Envoy extraordinary and minister plenipotentiary to Mexico. None.
A. Dudley Mann.....	Mar.				

R. P. Fleuniken .....	Oct. 14, 1848	.....do	.....do	To conclude with Denmark a treaty relative to commerce and navigation and to "the Sound and Belt duties."	Chargé d'affaires in Denmark.
George Baueroff. Richard Rush .....	{ Jan. 8, 1849	.....do	.....do	To conclude a postal convention with Great Britain and France.	{ Envoy extraordinary and minister plen

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
Charles B. Haddock .....	Mar. 21, 1851	President.	.....	To agree with Portugal upon the umpire provided for in the convention of February 26, 1851.	Chargé d'affaires in Portugal.

Matthew C. Perry .....	Nov. 11, 1852 .....	.....do .....	To conclude treaty of friendship, commerce, and navigation with Japan.	Captain, U. S. Navy.
J. R. Ingersoll .....	Dec. 28, 1852 .....	.....do .....	To conclude a claims convention with Great Britain.	Envoy extraordinary and minister plenipotentiary to Great Britain.
Robert C. Schenck .....				

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
D. A. Starkweather .....	July 24, 1854	President.	.....	To conclude a treaty of commerce and extradition with Chili.	Envoy extraordinary and minister plenipotentiary to Chili.

William Trousdale	Apr. 26, 1855	.....do	.....	To conclude a treaty of commerce and extradition with Brazil.	Envoy extraordinary and minister plenipotentiary to Brazil.
August Belmont	Apr. 30, 1855	.....do	.....	To conclude an extradition treaty with the Netherlands.	Minister resident in the Netherlands.
Carroll Spence	May 24,				

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
William Preston	Dec. 13, 1858	President.	.....	To conclude with Spain a treaty of commerce and concerning the cession of the island of Cuba and its dependencies, including the island of Pines.	Envoy extraordinary and

Frederick Hassaurek .....	Oct. 9, 1862	.....do.....	To conclude a claims convention with Ecuador.	Minister resident in Ecuador.
B. F. Whidden .....	Dec. 30, 1862	.....do.....	To conclude a treaty of amity and commerce with Hayti.	Commissioner and consul-general to Hayti.

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
George Bancroft .....	Feb. 13, 1868	President .....	.....	To conclude treaties of commerce, navigation, extradition, and naturalization with Prussia and the North German Union.	Envoy extraordinary and

John Lothrop Motley.....	May 11, 1869	.....do.....	To conclude consular and naturalization conventions with Great Britain.	Envoy extraordinary and minister plenipotentiary to Great Britain.
Henry S. Sanford.....	June 12, 1869	.....do.....	To extend the time for the exchange of the ratifications of the consular convention of December 5, 1868, with Belgium.	Minister resident in Belgium.

## APPENDIX C—Continued.

Name	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
George Bancroft.....	Apr., 1870	President.....	.....	To conclude a treaty with Baden, "regulating the rights of inheritances and marriages."	

Willard W. Edgecomb.....	June 24, 1871	.....do.....	To conclude a treaty of friendship, commerce, and extradition with the Orange Free State. To conclude additional articles to the convention of November 29, 1869, with the Dominican Republic, for the lease of the bay and peninsula of Samana.	Consul at Cape Town. Commercial agent at San Domingo.

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
Caleb Cushing.....	Nov. 28, 18				

R. W. Shufeldt .....	Nov. 15, 1881	.....do .....	Special envoy .....	To conclude a treaty of friendship and commerce with Corea.	Commodore, U. S. Navy.
William Henry Trescott ..	Dec. 1, 1881</				

## APPENDIX C—Continued.

Name.	When appointed.	By whom.	Rank.	Purposes.	Other office held at same time.
George H. Bates .....	July —, 1886				

## APPENDIX D.

### FISHING-GROUNDS.

*Under the treaty of 1818.*

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Marine  
Sq. miles.

Third. At bays named between lines 81 and 93 in Article IV, of proposed treaty of 1888 (colored in parallel red lines):

At Barrington Bay, Nova Scotia.....</
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## APPENDIX E.

### THE PENDING TREATY.

REVIEW OF THE FISHERIES NEGOTIATIONS BY W. L. PUTNAM—HISTORICAL AND EXPLANATORY—FROM THE BEGINNING OF THE CONTROVERSY TO THE PRESENT TIME—WHAT THE TREATY UNDERTAKES TO DO—HOSTILE CRITICISM MET.

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seize and bring into port vessels hovering on the coasts of Nova Scotia, and repeated the penalty of forfeiture for those fishing or "preparing to fish" within the prescribed waters. It also provided that no person should be admitted to claim the vessel seized without first giving security for costs not exceeding

bidden obtaining bait and all other supplies in Canada, and were excluded from Dominion ports except when putting in for the purposes expressly named in the Convention of 1818. Numerous seizures were made at that time, followed by forfeitures, one of which was the well known case of the *J. H. Nickerson*, a vessel proceeded against

as difficult of disturbance as though originally based on sound principles and correct rules of construction.

This was the status of these questions when the present negotiations commenced; yet former administrations

3 miles." It is not, however, to be understood by this suggestion that the "headland" theory is at all accepted. That assumed to run a line shutting in all sinuosities of the coast, without considering whether

At the mouths of all the bays designated in the treaty by name, the fourth article makes special lines of delimitation. There seems to be an impression with some that the exclusion is

what is expressed and by the limitation imposed in the article

















